

THE HIGH COURT

RECORD NUMBER 2020/86 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

RONAN HUGHES

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 12th day of June, 2020.

1. By this application the Applicant seeks an order for the surrender of the Respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 29th April, 2020 ("the warrant") issued by District Judge King of Chelmsford Magistrates' Court as the issuing judicial authority.
2. The warrant was endorsed by the High Court on the 29th April, 2020 and the Respondent was arrested and brought before the High Court on the same day, 29th April, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the warrant was issued. This was not put in issue by the Respondent.
4. I am further satisfied that none of the matters referred to in ss. 21A, 22, 23 or 24 of the European Arrest Warrant Act 2003, as amended, ("the Act of 2003") arise and that the surrender of the Respondent is not prohibited for the reasons set forth therein.
5. The UK seeks the surrender of the Respondent for the purpose of prosecuting him in respect of 40 offences consisting of 39 charges of manslaughter contrary to Common Law which carry a maximum penalty of up to life imprisonment and a single charge of conspiracy to assist unlawful immigration under section 25 of the Immigration Act, 1971 contrary to section 1(1) of the Criminal Law Act, 1977, which carries a maximum penalty of up to 14 years imprisonment. I am satisfied that the minimum gravity requirements of the Act of 2003 are met.
6. At section (e) iii of the warrant it is certified that the offence of manslaughter and conspiracy to assist unlawful immigration fall within article 2(2) of the Council Framework Decision of 13th June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, as amended ("the Framework Decision"), and the relevant boxes are ticked for the following offences: participation in a criminal organisation; facilitation of unauthorised entry and residence; murder; grievous bodily injury. By virtue of section 38 of the Act of 2003 it is not necessary for the Applicant to show correspondence between an offence in the warrant and an offence under Irish law where the offence in the warrant is an offence to which article 2(2) of the Framework Decision applies. In this instance the issuing judicial authority has certified that the offences are offences to which article 2(2) applies and has indicated same by ticking the relevant boxes at section (e) iii of the warrant as aforesaid. There is nothing in the warrant that gives rise to any ambiguity or perceived manifest error, such as would justify this Court in looking behind the certification in the warrant. The correspondence issue was

not pursued with any vigour at the hearing. Nevertheless, for the sake of completeness I point out that I am satisfied on reading the warrant as a whole that correspondence clearly exists in respect of the offence of manslaughter as defined in each state and that the alleged offence of conspiracy to assist unlawful immigration under s. 25 of the Immigration Act, 1971, contrary to s.1(1) of the Criminal Law Act, 1971, corresponds to the offence at Irish law of conspiracy contrary to section 71(1) of the Criminal Justice Act, 2006 to commit a serious offence, viz. an offence contrary to s. 2 of the Illegal Immigrants (Trafficking) Act, 2000. That section provides:-

"2 (1) A person who organises or knowingly facilitates the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum shall be guilty of an offence and shall be liable –

(a) on summary conviction, to a fine not exceeding €1500 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both."

European Arrest Warrant Details

7. It is necessary to set out in detail certain contents of the warrant in this matter by reason of the nature of the issues raised and in particular the issue as to where the offences occurred or are alleged to have occurred.
8. At section (e) of the warrant under the heading "Offences" it is stated that the warrant relates to *"in total: 40 offences"*.

Under the heading *"description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person"*, the following appears:-

"Charges 1 – 39 manslaughter: between 22 and 24 October 2019 Ronan Hughes unlawfully killed 39 Vietnamese nationals who were found dead in the back of a trailer in the United Kingdom. The migrants had been brought into the UK illegally by Hughes and his co-conspirators. Vietnamese nationals require a Visa to enter the UK. Given the circumstances in which the victims were transported it follows that those involved were aware that they had no right to enter the UK.

Charge 40 conspiracy: between 1 May 2018 and 24 October 2019 Ronan Hughes conspired with others to facilitate the illegal entry of people including the 39 deceased persons into the UK. Migrants were smuggled into the UK from Belgium in commercial trailers owned or operated by Hughes. Hughes organised, paid for the travel and controlled the drivers who collected the migrants.

On 9 May 2018 a vehicle operated by Ronan Hughes and driven by Eamonn Harrison was found to be carrying 18 illegal Vietnamese migrants.

On 10 October 2019 Eamon Harrison delivered a trailer numbered T103 to Zeebrugge. The trailer travelled by sea to Purfleet in Essex, England, and was collected by Christopher Kennedy. Kennedy drove the trailer to Collingwood Farm, Essex. Witnesses saw a number of people alight from the trailer and get into cars that had followed the trailer to the farm. One of the cars was used by Gheorge Nica. It is believed that the people seen leaving the trailer were illegal migrants.

On 15 October 2019 Hughes arranged for his driver Maurice Robinson to deliver trailer number GTR128D to Harrison in France.

On 16 October 2019 Hughes travelled to Essex.

On 17 October 2019 Harrison collected cakes and biscuits in Belgium and drove to Dunkirk, France. There was no legitimate reason for him to have travelled to France. He then drove to Zeebrugge where it travelled by sea to the UK. Kennedy collected the trailer and drove to Collingwood Farm. Nica and Hughes also travelled to the farm at the same time. After leaving the farm Kennedy and Hughes travelled together to an industrial site where attempts were made to disguise the fact that people had been in the trailer. When Kennedy delivered the load to the intended recipient it was rejected due to signs that people had been in the container. Later that day Hughes returned to a hotel in Essex where he met Robinson and Nica. Nica was seen to give Hughes a bag. Later that day Robinson took the trailer GTR128D to Purfleet where it travelled to Belgium and was collected by Harrison.

On 22 October 2019 Harrison takes the trailer GTR128D to Dunkirk, France, where a witness saw people entering the trailer. As on 17 October Harrison had no legitimate reason to travel to France. Before taking the trailer to Zeebrugge, Harrison makes two stops in Belgium. Temperature readings within the trailer suggest that the doors were opened during these stops. The trailer travelled to Purfleet by sea. When booking the ferry, Hughes falsely declared that the trailer was carrying a load of biscuits. On 22nd October 2019 Robinson is waiting in Purfleet and is taken to Collingwood Farm. Robinson then collects the trailer from the port in Purfleet. In order to enter the port he uses a PIN number provided to Hughes by the ferry company. Robinson drives a short distance before opening the rear doors and discovers that the occupants, 39 Vietnamese men and women, are dead. Robinson first telephones Hughes and is then called by Nica who is in the vicinity. Robinson telephones the emergency services who arrive at 1:49 and declare that all 39 migrants are dead.

The deceased died from lack of oxygen caused by being sealed within a container with insufficient air to sustain life. The ferry entered UK territorial waters at 19:43. An expert witness concludes that taking into account the temperature increase and phone usage by the victims all died between 20:00 and 22:00 hours. Robinson has pleaded guilty to conspiracy to facilitate unlawful immigration and manslaughter."

Under the heading "*nature and legal classification of the offence(s) and the applicable statutory provisions/code*", the following is stated in the warrant:-

"manslaughter – contrary to Common Law

The offence is made out if it is proved that the accused intentionally did an unlawful and dangerous act from which death inadvertently resulted.

Conspiracy to assist unlawful immigration under section 25 of the Immigration Act 1971, contrary to section 1(1) of the Criminal Law Act 1977

a person commits an offence if he does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union.

The offence of conspiracy is made out if a person agrees with any other person or persons that a course of conduct shall be pursued which will necessarily amount to or involve the commission of any offence or offences."

At section (f) of the warrant under the heading "*other circumstances relevant to the case (optional information)*", the following is included, *inter alia*:-

"It is alleged that Ronan Hughes was part of a conspiracy to facilitate unlawful immigration. Whilst key events took place outside of the UK and whilst Ronan Hughes is not a UK national the court in England and Wales has jurisdiction to try him for offences arising out of these circumstances.

At common law a conspiracy formed outside of the jurisdiction to commit an offence within the jurisdiction is triable in England and Wales. In Smith (Wallace Duncan) (No. 4) [2004] EWCA Crim 631; [2004] 2 Cr. App. R. 17, it was held that where a substantial measure of the activities constituting a crime takes place within the jurisdiction, then the courts of England and Wales have jurisdiction to try the crime, save only where it can seriously be argued on a reasonable view that these activities should, on the basis of international comity, be dealt with by another country; in particular, it was held that it is not necessary that the "final act" or the "gist" of the offence should occur within the jurisdiction.

Section 30(1) of the UK Borders Act 2007 amends the Immigration Act of 1971 to make it clear that the offence applies to acts committed in the United Kingdom, regardless of the nationality of the perpetrator, as well as acts committed overseas. This being the unlawful act relied upon to found the manslaughter charge it follows that the manslaughter charges along with the conspiracy to assist unlawful immigration can be tried in England and Wales.

S.2 of the Territorial Waters Jurisdiction Act 1878 extends the jurisdiction of the court to try non-UK nationals for offences committed in UK territorial waters. The consent of one of the principal secretaries of state is required before a prosecution

can be commenced. On 8th April 2020 the Home Secretary gave her consent to the prosecution of Ronan Hughes for the 39 offences of manslaughter. She further certified that the institution of proceedings is expedient."

Points of Objection

9. The Respondent filed points of objection to his surrender dated 13th May, 2020 as follows:-

- "1. *The surrender of the Respondent is precluded by reason of the provisions of s.44 of the European Arrest Warrant Act, 2003. In particular:*
 - a. It is not competent for the issuing judicial authority to certify definitively whether or not the offences are to be regarded as extraterritorial in nature;*
 - b. In any event the content of paragraph (f) of the European arrest warrant makes clear that the offences are extraterritorial in nature;*
 - c. The offences of manslaughter are not amenable to extraterritorial prosecution under Irish law pursuant to the provisions of Section 9 of the Offences Against the Person Act 1861 in circumstances where they were committed at sea rather than on land;*
 - d. Surrender for the offence of conspiracy to facilitate illegal entry into the United Kingdom is precluded under the provisions of Section 44 by reason of the fact that the narrative of events contained in the European arrest warrant does not correspond with an equivalent offence under Irish law.*
2. *The information provided in the European arrest warrant concerning the operation of the Territorial Waters Jurisdiction Act 1878 is not clear and should be the subject of a request for additional information pursuant to the provisions of Section 20 of the European Arrest Warrant Act 2003."*

10. At the hearing of this matter Mr. Farrell S.C., for the Respondent, indicated that he was not pursuing the objection based on the Territorial Waters Jurisdiction Act, 1878 and indicated that his sole ground of objection was that the surrender of the Respondent was prohibited by the provisions of s. 44 of the Act of 2003.

Submissions of the Respondent

11. The Respondent did not dispute that the UK had jurisdiction to try him for the offences in question but submitted that such jurisdiction was extraterritorial in nature as the alleged offences had not been committed (and should not be regarded by this Court as having been committed) in the territory of the UK.

12. It was submitted that this Court should hold that the alleged offences took place outside the territory of the UK and that in accordance with s.44 of the Act of 2003, it was therefore necessary for this Court to then determine whether under Irish law the acts or omissions of which it is alleged the offences consist would not, by virtue of having been

committed in a place other than the State (i.e. Ireland), constitute an offence under the law of the State (i.e. Ireland).

13. It was submitted that this Court is not bound by the view of the issuing state as to where the offence occurred. It was submitted that it is a matter for this Court to determine on a factual basis whether the offences as alleged were committed in a place other than the issuing state and that this Court should so determine on the basis of the information set out in the warrant. It was submitted that from the wording of the warrant it was apparent that the offences occurred outside the UK and that at the very least a strong impression was given in the warrant that the UK regarded the jurisdiction to prosecute the offences in question as one of extraterritoriality and thus regarded the offences as having been committed outside the UK.
14. It was submitted on behalf of the Respondent that under Irish law the acts or omissions of which the alleged offence consists did not constitute an offence by virtue of having been committed in a place other than the State. It was submitted that section 9 of the Offences Against the Person Act, 1861, as amended, only allowed for manslaughter to be prosecuted on an extraterritorial basis in Ireland provided the accused was an Irish citizen and the offence was committed on land.
15. Section 9 of the Offences Against the Person Act, 1861 provides as follows:-

"Where any murder or manslaughter shall be committed on land out of [area of application of the laws of the State], and whether the person killed were [an Irish citizen] or not, every offence committed by [any citizen of Ireland] in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory to murder or manslaughter, may be dealt with, inquired, of, tried, determined, and punished in any county or place in [the area of application of the laws of the State] in which such person shall be apprehended or be in custody, in the same manner in all respects as if such offence had been actually committed in that county or place: Provided, that nothing herein contained shall prevent any person from being tried in any place out of [the area of application of the laws of the state] for any murder or manslaughter committed out of [the area of application of the laws of the state], in the same manner as such person might have been tried before the passing of this Act."
16. It was submitted that the alleged offences were committed at sea and not on land. It was emphasised that the consent of the Home Secretary had been sought pursuant to the provisions of s. 2 of the Territorial Waters Jurisdiction Act, 1878, as regards the manslaughter charges. It was emphasised that the Respondent was not a UK national.
17. Reliance was placed upon s. 68 of the Offences Against the Person Act, 1861, as amended, which provides as follows:-

"All indictable offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of

the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas": Provided, that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces."

18. In short, it was submitted that it is not possible under Irish law to prosecute the offence of manslaughter (on an extraterritorial basis) where it occurs at sea and/or the accused is not a citizen of the State.
19. It was further submitted that the warrant did not point out clearly what offence under the Immigration Act, 1971 was said to be the unlawful act relied upon to found the manslaughter charge.
20. As regards the immigration offence, it was submitted that the warrant did not contain sufficient information to allow this Court to conclude that the acts or omissions of which the offence is alleged to have consisted do or do not constitute an offence under the law of the State.
21. The Respondent referred to the following authorities:-

Attorney General v. Garland [2012] IEHC 90;

Minister for Justice and Equality v. Harrison [2020] IEHC 29;

Minister for Justice, Equality and Law Reform v. Sliczynski [2008] IESC 73;

Minister for Justice, Equality and Law Reform v. Tighe [2010] IESC 61.

Submissions of the Applicant

22. On behalf of the Applicant it was submitted that the Respondent's points of objection were fundamentally misconceived and based on the incorrect premise that the UK was asserting an extraterritorial jurisdiction. It was submitted that it was clear from the warrant that the alleged offences occurred within the territory of the UK.
23. It was submitted that the fact that some of the conduct alleged to constitute an offence took place outside the territory of the issuing state does not mean that the offence is one in respect of which extraterritorial jurisdiction is being relied upon. It was submitted that manslaughter is a result offence and is not committed until death occurs. On the alleged facts as set out in the warrant, the vessel carrying the trailer containing the victims entered UK territorial waters at 19:43pm and an expert had concluded that the victims all died between 20:00pm and 22:00pm. It was submitted that it was therefore clear that

what was being alleged was that the victims had died after the vessel had entered UK territorial waters and therefore the offence of manslaughter was committed in the territory of the UK.

24. As regards the alleged offence of conspiracy to assist unlawful immigration, the conspiracy was alleged to have occurred between 1st May, 2018 and 24th October, 2019, including the bringing of the deceased into the UK. The purpose of the conspiracy was to facilitate such illegal entry into the UK and the alleged facts as set out in the warrant made it clear that significant aspects of that conspiracy took place in the territory of the UK. In addition to arranging for trailers containing persons to enter the UK, the Respondent is alleged to have obtained the necessary PIN number to allow the trailer to be taken from Purfleet and to have given the said PIN number to the driver. It is alleged that the Respondent organised the travel and controlled the drivers and that he had travelled to the UK in the course of the conspiracy and met with his co-conspirators.
25. The Applicant referred to the following authorities:-

DPP v. Stonehouse [1978] AC 55;

Minister for Justice and Equality v. D.F. [2016] IEHC 82;

Minister for Justice and Equality v. S.F. [2016] IEHC 81;

Minister for Justice and Equality v. Trust Egharevba [2015] IESC 55;

Minister for Justice, Equality and Law reform v. Hill [2009] IEHC 159;

R v. Doot [1973] AC 807.

26. In short, the Applicant submitted that there was no question of extraterritoriality and that as the offences were alleged to have been committed in the territory of the UK, s. 44 of the Act of 2003 was not engaged and did not arise.

Analysis and Decision

27. Under article 4 of the Framework Decision, optional grounds for non-execution of a European arrest warrant are set out including article 4.7.(b) which provides that an executing judicial authority may refuse to execute the European arrest warrant:-

"where the European arrest warrant relates to offences which: ... (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory."

28. Section 44 of the Act of 2003 directly incorporates article 4.7.(b) and provides as follows:-

"A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her was committed or is

alleged to have been committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State."

29. Section 44 of the Act of 2003 sets out a two-part test for determining whether surrender is prohibited by virtue of that section. Firstly, it must be established that the offence specified in the European arrest warrant was committed or is alleged to have been committed in a place other than the issuing state. Secondly, it must be established that the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State. In *Minister for Justice and Equality v Trust Egharevba* [2015] IESC 55, Denham C.J. stated at para. 15 of her judgment:-

"The requirements set out in section 44 of the Act of 2003, as amended, are conjunctive. Thus, both conditions are required to be met for the appellant to succeed."

30. It is noteworthy that s. 44 contains the wording "*was committed or is alleged to have been committed*". This appears to envisage two separate concepts, viz. that of "was committed" and that of "is alleged to have been committed". It appears to me that the reference to "was committed or is alleged to have been committed" reflects the fact that a European arrest warrant may be issued in respect of a person whose surrender is being sought in order to serve a sentence for an offence in respect of which he has already been convicted, or alternatively may be issued in respect of a person whose surrender is being sought in order to prosecute such person for an alleged offence. Where the surrender is sought in order for the person to serve a sentence, the fact of the commission of an offence has already been judicially determined and therefore the location of the offence will have been established. Where a person is being sought in order to stand trial in respect of an alleged offence it has not yet been judicially determined whether an offence was actually committed, including where the offence was committed, and so the relevant criteria is where the offence is "alleged to have been committed". If that is so then in considering s. 44 in relation to a prosecution warrant, the executing judicial authority has to determine where it is alleged the offence was committed and in particular whether it is alleged that the offence was committed in a place other than the issuing state. However, if I am incorrect in that interpretation of s. 44, it is not significant in this case as I am satisfied on the basis of the facts as set out in the warrant that not only is it alleged that the offences were committed in the UK but also that the offences, if committed, were in fact committed in the UK.
31. The executing judicial authority is not normally required to conduct its own fact-finding inquiry to determine where the alleged offence took place but rather is to take cognisance of where the offence is alleged to have taken place on the basis of the information set out in the warrant or in any additional information furnished by the issuing state. Only where there is obvious ambiguity or a manifest error as to the stated alleged location of the

offence should the Court consider looking beyond what is alleged in the warrant or any additional information furnished by the issuing state. I find no such ambiguity or manifest error in the warrant before me. The Respondent did not seek to put in evidence anything which might have undermined or cast doubt as to the matters set out in the warrant, in particular when and where it is alleged the victims had died.

32. The Respondent relies upon the multiplicity of locations referred to in the narrative of events contained within the warrant, but reference to a number of different locations and/or to events which took place in a number of different states does not in and of itself mean that an offence is alleged to have been committed in a place outside the issuing state or even raise an ambiguity in respect thereof. It is a long-standing principle of criminal law that a person may commit an offence in one jurisdiction while being physically present in another jurisdiction. In respect of result crimes, i.e. crimes which are not completed until some event has resulted, traditionally courts look to the place where the result occurred in order to determine where the offence was committed. That is not to say that the courts of the state where the offence was committed will have exclusive jurisdiction in respect of the prosecution of same, a number of states may take upon themselves jurisdiction to prosecute such a matter depending upon the existence of particular facts, for example the nationality of the victim or alleged wrongdoer. The question of jurisdiction is a separate matter from the place where the offence is alleged to have been committed. For example, a French national may be deliberately poisoned by another French national in France shortly before the victim leaves France to visit the UK, but his death does not occur until he is in London. The poisoner does not leave France. The offence certainly occurred in the UK and the UK has jurisdiction to prosecute it. But as most of the relevant witnesses and items of real evidence are in France and if the French authorities wish to prosecute the poisoner in France, it may be that the UK would agree not to prosecute and leave it to France to do so. That does not mean that the offence did not occur in the UK. The certification of expediency by the UK Home Secretary required by s. 2 of the Territorial Waters Jurisdiction Act, 1878 is not indicative of the alleged crime having been committed outside the UK or that an extra-territorial jurisdiction is being invoked, but rather reflects the fact that in some instances there may be overlapping jurisdictions and particular aspects might render it not expedient for the matter to be prosecuted in the UK. For example where the offence occurred on a vessel as it passed through UK territorial waters without stopping and the relevant investigation was conducted by another state with overlapping jurisdiction such as the flag state of the vessel.
33. The first part of the test set out in s. 44 of the Act of 2003 does not refer to whether or not the issuing state has or claims jurisdiction to prosecute the matter but rather requires the executing judicial authority to be satisfied as to where the offence was committed or is alleged to have been committed. It is only where the executing Irish judicial authority is satisfied that the offence was or is alleged to have been committed outside the issuing state that it then needs to turn to the second limb of the test in s. 44 in order to ascertain whether the act or omission of which the offence consists would not constitute an offence under Irish law by virtue of having been committed in a place other than Ireland.

34. Neither the Act of 2003 nor the Framework Decision expressly define the territorial limits of the respective states for the purposes of s. 44 or article 4. I am satisfied that applying the ordinary meaning of the words "in a place other than the issuing state" means in a place outside the territorial limits of the issuing state. I am satisfied that the territorial limits of a state include its territorial waters. Thus I am satisfied that on a reading of the totality of the warrant in this case that it is alleged therein that the offences of manslaughter and conspiracy were committed in the territory of the issuing state, i.e. the UK. Moreover, I am satisfied that on the facts as set out in the warrant, the said offences, if committed, did indeed occur in the issuing state.
35. The Respondent is charged with an offence of conspiracy to assist unlawful immigration under s. 25 of the Immigration Act, 1971 contrary to s. 1(1) of the Criminal Law Act, 1977. Conspiracy to commit a particular crime consists of an agreement entered into by two or more persons to bring about the commission of that crime. Insofar as each of the conspirators carries out an act or omission in furtherance of bringing about the commission of the crime intended, then each acts with the agreement, consent and authority of the others and each conspirator is in effect an agent of his co-conspirators so that his act or omission is also that of his co-conspirators. Conspiracy may transcend national borders. Acts taken in furtherance of the conspiracy may occur in a number of different states. One of the conspirators may never enter a state where another of the conspirators carries out some act or omission in furtherance of the conspiracy. Notwithstanding such matters each conspirator will be taken to have carried out such act or omission wherever it was carried out by one of the other conspirators. That this is so is clearly demonstrated in a number of authorities, including:-

Attorney General v. Garland [2012] IEHC 90;

Ellis v. O'Dea (no.2) [1991] 1 I.R. 251;

Minister for Justice and Equality v. D.F. [2016] IEHC 82; [2016] 2 JIC 1504, 2016 WJSC-HC 16622;

Minister for Justice and Equality v. S.F. [2016] IEHC 81; [2016] 2 JIC 1503, 2016 WJSC-HC 16677;

Minister for Justice and Equality v. Trust Egharevba [2015] IESC 55.

36. In *Ellis v. O'Dea (no. 2)* [1991] 1 I.R. 251, the principal judgment of the Supreme Court was delivered by Finlay C.J. (with whom Griffin, Hederman, McCarthy and O'Flaherty JJ. agreed). The Court had to consider whether a person entering into a conspiracy outside Ireland in furtherance of which an overt act is done in Ireland is amenable to trial in the courts of Ireland. At p. 258 Finlay C.J. stated:-

"it is a fundamental principle of the Irish common law, applicable to the criminal jurisdiction of the Irish courts, that a person entering into a conspiracy outside Ireland in furtherance of which an overt act is done in Ireland is amenable to trial in

the courts of Ireland. I am equally satisfied that a person who, though located outside Ireland, does an act which either in itself or by reason of the conduct of an accomplice has the effect of completing a criminal offence in Ireland, is amenable to the Irish courts. The broad reason underlying these two principles is, of course, that the criminal law must take cognisance of any crime committed within the State and must make persons, if charged before it, amenable for that crime, irrespective of where they were located at the time of its commission. It would be the very negation of an adequate criminal jurisdiction and an absurdity if a person joining in a criminal act being either a conspiracy or a joint venture could escape responsibility by reason of the fact that he has committed no overt act within the jurisdiction."

In *Attorney General v. Garland* [2012] IEHC 90, Edwards J. stated at para. 6.7.43:-

*"The Court accepts that the law as to jurisdiction in the case of a conspiracy entered into abroad in furtherance of which an overt act is done in Ireland is as set out in *Ellis v. O'Dea* (no.2) [1991] 1 I.R. 251, and is broadly analogous to the traditional English common law position as described in *R v. Doot* [1973] A.C. 807 which the court has also found to be of considerable assistance."*

In *R. v. Doot* [1973] A.C. 807 at p. 827 of his judgment Lord Pearson explained the position as follows:-

*"A conspiracy involves an agreement express or implied. A conspiratorial agreement is not a contract, not legally binding, because it is unlawful. But as an agreement it has three stages, namely (1) making or formation (2) performance or implementation (3) discharge or termination. When the conspiratorial agreement has been made, the offence of conspiracy is complete, it has been committed, and the conspirators can be prosecuted even though no performance has taken place: *Reg. v. Aspinall* 2 Q.B.D. 48, per Brett J.A. at pp. 58 – 59. But the fact that the offence of conspiracy is complete at that stage does not mean that the conspiratorial agreement is finished with. It is not dead. If it is being performed, it is very much alive. So long as the performance continues, it is operating, it is being carried out by the conspirators, and that it is governing or at any rate influencing their conduct. The conspiratorial agreement continues in operation and therefore in existence until it is discharged (terminated) by completion of its performance or by abandonment or frustration however it may be."*

37. In *Minister for Justice and Equality v. Trust Egharevba* [2015] IESC 55 the surrender of the Respondent was sought by France to face prosecution for two offences, viz:-

"laundering as an organised criminal gang, by investment concealment or conversion of the proceeds of the crimes of procuring and/or of living off immoral earnings, committed as an organised criminal gang, and of trafficking in human beings, committed as an organised criminal gang; and criminal conspiracy for the purposes of preparing to commit the crimes of procuring and/or of living off

immoral earnings, committed as an organised criminal gang and of trafficking in human beings, committed as an organised criminal gang.”

The Respondent was alleged to have received large sums of money into her bank accounts in Ireland and to then have arranged to have those funds sent to Nigeria. Investigations had revealed that young Nigerian women had been procured by “Mamas” in Nigeria and had been taken to Italy and then to Grenoble in France where they were forced into prostitution in order to repay an imaginary debt in the amount of €50,000. The Respondent had never been in France. The European arrest warrant stated that the offences of which she was accused were committed in Grenoble (Isere, France) on French national territory and on an indivisible basis in Nigeria and in Ireland between certain dates. The High Court held:-

“In those circumstances the act of one participant committed in France can be regarded as the act of all the participants. It is alleged in this case that monies, the proceeds of prostitution and people trafficking, were collected in France by R.O. and transferred to a bank account held in Ireland by the respondent. The issuing state is attributing those actions of R.O. to the respondent because both parties are said to have been participants in the organised group which this activity was intended to benefit and that is sufficient to ground the laundering charge preferred against the respondent as having occurred within the territory of France.”

In the Supreme Court, Denham C.J. at para. 14 of her judgment affirmed the determination of the learned High Court judge on that issue.

38. In both *Minister for Justice and Equality v. S.F.* [2016] IEHC 81 and *Minister for Justice and Equality v. D.F.* [2016] IEHC 82, the surrender of each of the respondents was sought by France to serve a sentence imposed in respect of offences for:-

“1. Complicity of smuggling of prohibited or heavily taxed goods as part of an organised group; 2. Complicity of attempted undeclared exportation of prohibited or heavily taxed goods committed as part of an organised group; 3. Participation in a conspiracy with the aim of preparing an offence punished by 10 years’ imprisonment.”

The warrant in that case set out at section (e), *inter alia*, that on 5th March, 2010, [JPB], was arrested in Veys, France, while driving a lorry which transported five tons of smuggled cigarettes. He had loaded those goods in the region of Paris and headed for Cherbourg to embark to Ireland. He was not in possession of the customs documents provided for by law. This driver, who was employed by a company located in Ireland, was managed by S.F. and D.F. The ferries had been reserved by his bosses who had stayed in contact with him during the transport carried out with a lorry belonging to the company. Additional information received from the issuing judicial authority had asserted that the circumstances in which the offences were committed were:-

"Having, on the Irish territory, but in connection with offences committed on the national territory and within the jurisdiction of the specialized inter regional court in Lille, in February 2020 and March 2010, in any cases within a time period not covered under statutes of limitations, been the accomplice of the offence of possession and transportation in breach of legal and statutory provisions heavily taxed goods, in the present case approximately 5 tons of Richman branded smuggled cigarettes, with this circumstance that the facts were committed as part of an organized group, of which [JPB] is accused, by knowingly helping or assisting him in his preparation or his consumption and by giving instructions to commit the offence, in the present case by providing the combination of vehicles having served for the transport of smuggled goods and by giving instructions in his capacity as company manager to his employee, some facts provided for by [various provisions of the French Customs Code and punished by various provisions of the French Customs Code and the consideration of various articles of the French criminal code]."

Further additional information from the issuing judicial authority stated:-

"The F. brothers were convicted as accomplice of transport and possession with the aim of smuggling prohibited or heavily taxed goods committed as part of an organized group as they were recognised as the two people who gave the orders and organised the traffic."

It was not alleged that the respondents were physically in France where the smuggled cigarettes were located but it was established that the substantive offences were committed in France and as the conviction of the respondents was in respect of complicity in those offences it was clear that the offences with which the respondents had been sentenced were committed in France. In *S.F., Donnelly J.* held at para. 69 of her judgment:-

"In relation to the conspiracy offence, this had as its object the carrying out of the substantive offences in France. The law of France allows those who participate in the conspiracy to be held responsible for the offences which are carried out on the territory of France. In this case it is clear that the substantive offences were carried out in France and that the complicity and participation of the Respondent is in those offences. In those circumstances, the act or acts committed by one participant in France can be regarded as the act or acts of all the participants. Therefore these offences occurred within the territory of France."

39. It is clear from the warrant before the Court in this case and in particular from the matters set out at sections (e) and (f) thereof that the conspiracy charge is alleged to have occurred in the UK. Furthermore on the basis of the facts as set out in the warrant the offence of conspiracy, if committed, did indeed occur in the UK. For example, it is alleged the conspirators, including the Respondent, made use of premises within the UK, such as Collingwood Farm and a nearby industrial premises, that illegal immigrants were transported into the UK through the port of Purfleet, that the PIN to enable transport

through Purfleet Port was obtained by the Respondent and that the conspirators, including the Respondent, met up in the UK in furtherance of the conspiracy.

40. It is also clear from the warrant and in particular from the matters set out at sections (e) and (f) thereof that the manslaughter charges are also alleged to have occurred in the UK. Each manslaughter charge is grounded upon an allegation that the Respondent intentionally did an unlawful and dangerous act from which death inadvertently resulted. The unlawful act referred to was the unlawful conspiracy to assist unlawful immigration under s. 25 of the Immigration Act, 1971, contrary to s. 1(1) of the Criminal Law Act, 1977 and the dangerous nature of that act was the manner in which the said conspiracy was in fact carried out, as set out in the particulars contained within the warrant. I am satisfied that there is no lack of clarity in the warrant in relation to those matters such as would necessitate the Court raising a request for additional information pursuant to s. 20 of the Act of 2003 in respect of same.
41. Manslaughter is a result crime. The crime is not complete until death occurs. It is clear from the particulars set out in the warrant that it is alleged that the death of the unfortunate 39 Vietnamese nationals occurred after the vessel had entered UK territorial waters. It is clear therefore that it is alleged in the warrant that the offences of manslaughter were committed in the UK, the issuing state. Furthermore on the basis of the facts as set out in the warrant, the offences of manslaughter, if committed, did indeed occur within the UK. Death is alleged to have occurred after the vessel entered UK territorial waters.
42. Moreover, it is clear from the particulars set out in the warrant that it is alleged that the deaths were brought about by the manner in which the unlawful conspiracy to assist illegal immigration into the UK was put into effect and carried out by the conspirators, including actions carried out in the UK. The deaths were the ultimate completion of the manslaughter charges. Those deaths were the unfortunate culmination of a series of events, acts and/or omissions, which had spanned a number of states such as the UK, France and Belgium. Significant actions and events took place in each of those states ultimately leading to the tragic death of the 39 victims. These events may be regarded as a series or course of events, each of which contributed to the ultimate deaths. The deaths are alleged to have occurred in UK territorial waters and thus the offence of manslaughter is alleged to have occurred in UK territorial waters. Even if the actual time of death had coincided with a period before the vessel entered UK territorial waters, the offence of manslaughter could still be regarded as having occurred in the UK as it was the direct result of the dangerous manner in which the unlawful conspiracy (significant parts of which were planned, arranged and conducted in the UK) was carried out. The unlawful act grounding the charges of manslaughter was a conspiracy which occurred in the UK. Significant acts in furtherance of that conspiracy occurred in the UK, and so significant acts in the commission of the manslaughters occurred in the UK.
43. I am satisfied that the offences of manslaughter and conspiracy as set out in the warrant are alleged to have occurred within the UK. Furthermore on the basis of the facts as set

out in the warrant, the offences, if committed, did indeed occur in the UK, the issuing state.

44. It follows that the Respondent has failed to satisfy the first requirement of s. 44 and as the two requirements of the section are conjunctive, the Respondent has failed to meet the conditions set out in s. 44. In such circumstances, s. 44 does not arise and I dismiss the Respondent's objection in that regard.
45. As the Respondent has failed to satisfy the first requirement of s. 44, it is not necessary for the Court to consider whether or not the second requirement of s. 44 is met. Death is alleged to have occurred in UK territorial waters and there is no evidence to suggest otherwise. Even if one were to assume that the manslaughter offences which occurred within UK territorial waters are to be regarded as occurring outside of the UK, then it appears that the acts or omissions said to constitute the offences would constitute offences under Irish law if similarly occurring in Irish territorial waters. The provisions of section 89 of the Sea Fisheries and Maritime Jurisdiction Act, 2006 provide for this as follows:-

"89.(1) Every offence committed within the territorial seas or internal waters is an offence within the jurisdiction of the State and may be dealt with by a court of competent jurisdiction although committed on board or by means of a foreign ship and a person who commits such offence may be arrested, tried and punished accordingly.

(2) For the purpose of arresting any person charged with an offence declared by this section to be within the jurisdiction of the State, the territorial seas and internal waters shall be deemed to be within the jurisdiction of any court or judge having power in the State to issue warrants for the arrest of persons charged with offences committed within the jurisdiction of such court or judge.

90.(1) Proceedings (other than the taking of depositions) for the prosecution of a non-national for an offence alleged to have been committed in the territorial seas on board or by means of a foreign ship shall not be instituted without the certificate of the Minister for Foreign Affairs that the institution of the proceedings is in his or her opinion expedient.

(2) This offence does not apply to an offence under –

(a) the Dumping at Sea Acts, 1996 to 2006,

(b) the Maritime Security Act, 2004,

(c) the Sea Fisheries Acts, 2003 and 2006, or

(d) the Sea Pollution Acts, 1991 to 1999."

46. It seems clear from the foregoing provisions of the Sea Fisheries and Maritime Jurisdiction Act, 2006 that had the acts or omissions as set out in the European arrest warrant, and in

particular had death occurred within Irish territorial waters, then same would constitute an offence under the law of Ireland and could be prosecuted accordingly. The requirement for ministerial certification of expediency appears to be common in both states.

47. Having dismissed the Respondent's objection made pursuant to s. 44, I am satisfied that the surrender of the Respondent is not prohibited by the provisions of part 3 of the Act of 2003.
48. It follows from the foregoing that this Court will make an order, pursuant to section 16 of the Act of 2003, for the surrender of the Respondent to the UK.