

THE HIGH COURT

[2022] IEHC 162
[2021 No. 260 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

LIAM CRAIG PORTER

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 17th day of February, 2022

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 pursuant to a Trade and Co-Operation Agreement warrant dated the 27th of September 2021 ("the TCA warrant"). The TCA warrant was issued by District Judge John Temperley, sitting at North Cumbria Magistrates' Court, as the issuing judicial authority.
2. The TCA warrant seeks the surrender of the respondent in order to prosecute him in respect of an alleged offence of murder.
3. The TCA warrant was endorsed by the High Court on the 28th day of September 2021 and the respondent was arrested and brought before the High Court on the 29th of September 2021 on foot of same.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the TCA warrant was issued. No issue was raised in that regard.
5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
6. The offence in respect of which surrender of the respondent is sought carries a maximum penalty in excess of twelve months' imprisonment.
7. As surrender is sought to prosecute the respondent, no issue arises under s. 45 of the Act of 2003.
8. The respondent objected to surrender and set out the points of objection in an amended notice filed on the 1st of February 2022 as follows:
 - It is a mandatory requirement of Section 11 of the Act of 2003 that there be unwavering clarity as to the number of offences for which the respondent is sought. In addition, there must be clarity as to the offence to which the Court will apply the law for correspondence. Contrary to this requirement:
 - (a) Part e of the warrant states three offences.

- (b) Under this heading it goes on to say Murder...1 offence and thereafter manslaughter ... 1 offence, assisting offender ... 1 offence.
- (c) The warrant states that it relates to in total: three offences.
- (d) The description of the circumstances of the offence at Paragraph (e) state that there is both an assault and later, a fatal stabbing and the requested person is said to be present for both attacks.
- (e) Paragraph E.II states that manslaughter "is a direct alternative to the offence of murder which the jury might have to consider."
- (f) Part E.II of the warrant states that the respondent left the scene with Kane Hull after the stabbing, in Kane Hull's vehicle, that his presence with Kane Hull in the immediate aftermath of the stabbing shows he was willing to support and assist Kane Hull and that Kane Hull was present when the vehicle was set on fire.
- Surrender of the respondent in respect of the offences and each or other of them contained in the TCA warrant is prohibited by section 5 and/or section 38 of the Act of 2003 as the offences and each or other of them do not correspond in their entirety or at all to an offence or offences under the laws of the state and/or the facts as disclosed in the warrant are insufficient to correspond to an offence or offences under the laws of the state. The respondent requested in this regard that the Court make enquiry as to correspondence in respect of the offences in the warrant.

Is surrender prohibited under Section 11 of the Act of 2003?

9. Relevant statutory provisions and caselaw

Section 11 of the Act of 2003 provides:

"11.— (1) A relevant arrest warrant shall, in so far as is practicable - (a) in the case of a European arrest warrant, be in the form set out in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, (b) in the case of a Trade and Cooperation Agreement arrest warrant, be in the form set out in Annex Law-5 to the Trade and Cooperation Agreement, and (c) in the case of an arrest warrant within the meaning of the EU-Iceland Norway Agreement, be in the form set out in the Annex to the EU-Iceland Norway Agreement.

(1A) Subject to subsection (2A) , a relevant arrest warrant shall specify

- (a) the name and the nationality of the person in respect of whom it is issued,
- (b) the name of the judicial authority that issued the relevant arrest warrant, and the address of its principal office,
- (c) the telephone number, fax number and email address (if any) of that judicial authority,
- (d) the offence to which the relevant arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned,

- (e) that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his or her arrest, or other order of a judicial authority in the issuing state having the same effect, has been issued in respect of one of the offences to which the relevant arrest warrant relates,
- (f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, and
- (g)(i) the penalties to which that person would, if convicted of the offence specified in the relevant arrest warrant, be liable,
 - (ii) where that person has been convicted of the offence specified in the relevant arrest warrant but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence, or
 - (iii) where that person has been convicted of the offence specified in the relevant arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists.

(2) Where it is not practicable for the relevant arrest warrant to be in the form referred to in subsection (1), it shall include such information, additional to the information specified in subsection (1A), as would be required to be provided were it in that form.

(2A) If any of the information to which subsection (1A) (inserted by section 72(a) of the Criminal Justice (Terrorist Offences) Act 2005) refers is not specified in the relevant arrest warrant, it may be specified in a separate document.

[...]

(4) For the avoidance of doubt, a relevant arrest warrant may be issued in respect of one or more than one offence."

10. The case law in relation to the requirement for clarity is well established. In *Minister for Justice & Equality v Herman* [2015] IESC 49, the Supreme Court stated at para. 17:

"17. At the core of this appeal is the issue of clarity; or the lack of it. It is essential when a court has before it a request in a European arrest warrant that there be clarity as to the offences for which surrender is sought, and as to any proposed sentencing."

11. In *Minister for Justice and Equality -v- Connolly* [2014] IESC 34, [2014] 1 IR 720, Hardiman J. stated at paras. 30 and 31:

"[30] This matter is of the greatest importance since the ability of the requesting State to put the respondent on trial is limited to the offences specified in the warrant. It is a mandatory requirement of the European arrest warrant procedure that there be unambiguous clarity about the number and nature of the offences for which the person sought is so sought. Presumably, the

Spanish authorities know for how many offences they intend to put him on trial. I cannot understand why this has not been made clear. The relevance of this requirement, contained in s. 11 of the Act of 2003 is particularly clear in the present case because the objection was one to which s. 44 of the Act applies, and therefore one that requires a very specific knowledge of the precise Spanish offences for which delivery is sought. Minister for Justice v. Bailey [2012] IESC 16, [2012] 4 I.R. 1 emphasises the need to consider the issue of reciprocal offences which cannot be done without the specific knowledge of the Spanish offences referred to. This specific and unambiguous information is also required, as several citations above make clear, for the purpose of the implementation of the rule of speciality.

[31] *I consider it to be an imperative duty of a court asked to order the compulsory delivery of a person for trial outside the State to ensure that it is affirmatively and unambiguously aware of the nature of the offences for which it is asked to have him forcibly delivered, and for which he may be tried abroad, and of the number of such offences.*

I would, therefore, dismiss the appeal and decline to make an order for the delivery of the respondent."

12. In *Minister for Justice, Equality and Law Reform v Desjatnikovs* [2008] IESC 53, [2009] 1 IR 618, the Supreme Court indicated at para. 35:

"[35] *The fact that there is a precise description of the facts of the case is important, even though the issue of double criminality is not required to be considered. It is important that there be a good description of the facts. An arrested person is entitled to be informed of the reasons for his arrest and of any charge against him in plain language which he can understand. Also, in view of the speciality rule, the facts upon which a warrant is based should be clearly stated."*

13. In *Minister for Justice and Equality -v- AW* [2019] IEHC 251, Donnelly J. indicated at paras. 48 and 49:

"48. *The respondent has also claimed that his surrender is prohibited because the information does not set out the degree of participation of the respondent in the offences. The information in the EAW has already been set out. This does not list the names of the people he conspired with. The requirement for detail in the EAW is set out in the Framework Decision and in the Act of 2003. The Superior Courts in a number of cases have examined the reasons for the giving of details. These are to permit the High Court to carry out its functions under the Act of 2003 of endorsing the EAW and establishing correspondence and also to permit the respondent to challenge his surrender on grounds such as the rule of speciality (s.22), ne bis in idem and extraterritoriality (See *Minister for Justice and Equality v Cahill* [2012] IEHC 315 and *Minister for Justice Equality and Law Reform v Desjatnikovs* [2008] IESC 53). The respondent also has the right to know the reason for his arrest.*

49. *In the present case, any claimed lack of detail by the respondent, does not affect any of those items. The respondent has not indicated any real difficulty and therefore his complaints about lack of detail are only theoretical in nature. The issuing judicial authority is not required to give every single detail as to the degree of participation. (Minister for Justice, Equality and Law Reform v Stafford [2009] IESC 83). The details required are those which relate back to the reasons why such detail is required."*

14. Relevant information

It is important to understand the detail contained in the warrant.

(i) Part (c)1 of the warrant indicates the maximum length of the custodial sentence or detention order which may be imposed for the offences and, in the present case, it reads as follow:

1. Murder – imprisonment for life
2. Manslaughter – imprisonment for life
3. Assisting Offender – maximum sentence 10 years"

(ii) Part (e) of the warrant states that it relate to three offences and goes on to describe the circumstances in which they were committed, including the time, place and degree of participation in the offences by the requested person:

"At 20:45 hours on Saturday 18th September 2021, Ryan Kirkpatrick was publicly stabbed to death outside a busy restaurant at Carlyle Court, Carlisle, Cumbria, England.

Fifteen minutes before the fatal stabbing, CCTV shows the requested person, Liam Porter, and another male, Kane Hull, at the scene of the offence. CCTV shows the Kane Hull assault Ryan Kirkpatrick and both the requested person and Kane Hull then leave the scene before returning later. A vehicle associated with Kane Hull also leaves the scene.

The two males then return to the scene, both of these males are now disguised with hoods and facemasks. Ryan Kirkpatrick is then fatally stabbed by Kane Hull. Part of this incident is shown on CCTV. The requested person, Liam Porter, is wearing a distinctive top on both occasions and this is part of how he has been identified. A police officer has identified Kane Hull from CCTV as being the person responsible for the stabbing. The officer has been able to identify [...] Kane Hull as his hood slips during the incident.

Kane Hull has approached and stabbed Ryan Kirkpatrick with a knife up to 4 times. Fatal injuries resulted at the scene. The requested person is present for both attacks on Ryan Kirkpatrick, his presence at the scene with Kane Hull is evidence that he was present to support and encourage the stabbing which occurred.

The requested person, Liam Porter and Kane Hull then fled in a vehicle linked to Kane Hull. This vehicle was later found and had been set on fire. Liam Porter was present when this vehicle was set on fire.

Liam Porter has also assisted Kane Hull after the stabbing by leaving the scene with him and thus providing support to him.

The requested person, Liam Porter, and Kane Hull remained at large together before leaving the UK on the 22nd September 2021 to travel to Northern Ireland and then to Ireland.”

The nature and legal classification of the offences and the applicable statutory provisions are set out as follows:

“The conduct in offence 1 (Murder) is contrary to Common Law.

The conduct in offence 2 (Manslaughter) is contrary to Common Law.

The conduct in offence 3 (Assisting Offender) is contrary to Section 4 Criminal Law Act 1967.”

The offences are further described at part (e) II of the warrant as follows:

“Murder contrary to Common Law. The requested person Liam Porter travelled to and from the scene of the offence with another male who was armed with a knife. Porter was stood with the other offender at the time the fatal injuries were inflicted providing assistance and encouragement.

Manslaughter contrary to Common Law. This is a direct alternative to the offence of Murder which the jury might have to consider.

Assisting Offender contrary to Section 4 Criminal Law Act 1967. Liam Porter left the scene with Kane Hull after the stabbing in Kane Hull’s vehicle. His presence with Kane Hull in the immediate aftermath of the stabbing shows he was willing to support and assist Kane Hull. Kane Hull was present when the vehicle was set on fire.”

15. A Section 20 request seeking further clarification was issued on the 7th of December 2021 in relation to the following matters:

- “1. In respect of each individual offence, please provide any further information that is available about the circumstances in which it is alleged that each offence was committed by the Respondent, including but not limited to:
 - (i) The time of the commission of the offence;
 - (ii) The place of the commission of the offence; and
 - (iii) The degree of participation or alleged participation in each offence by the Respondent, including any relevant information that will assist the High Court about any such participation.”

16. A comprehensive reply was furnished by the issuing judicial authority by letter dated the 11th of January 2022 in which it is stated that:

“The respondent faces charges of murder contrary to Common Law and alternative charges of manslaughter contrary to Common Law and assisting an offender contrary to s4(1) Criminal Law Act 1967. The evidence on which these offences are based is the same.

On 18 September 2021 at approximately 20.45 Ryan Kirkpatrick was fatally stabbed in the courtyard area known as Carlyle’s Court, Fisher Street, Carlisle, Cumbria, England. Ryan Kirkpatrick had spent the afternoon celebrating with his family and friends after a family christening and they were all socialising within this courtyard.

The respondent and his co-defendant, Kane Hull, had spent the afternoon together in the Royal Scot Public House, Carlisle. At 19:55 the respondent received a call from his sister who was at Carlyle’s Court. After receiving the call, the respondent and Kane Hull travelled to the Carlyle’s Court in a blue Volvo which Kane Hull driving.

At 20.26pm CCTV shows the respondent entering Carlyle’s Court. He makes a phone call to Kane Hull who was still outside in his vehicle. The Prosecution case is that the respondent was telling Kane Hull that Ryan Kirkpatrick was at Carlyle’s Court. There is material to show that there was bad blood between Kane Hull and Ryan Kirkpatrick. The respondent, as one of Kane Hull’s close associates would have been well aware of this feud.

Following this phone call from the respondent to Kane Hull, Kane Hull enters the courtyard and picks up a pint glass from a table, he throws the contents to the ground and immediately threatens Ryan Kirkpatrick with the glass. There is then a scuffle between the two males. Ryan Kirkpatrick receives an injury to his lip from Kane Hull. The respondent remains within 2 metres of Kane Hull during this incident and clearly witnesses it. The confrontation is broken up and the respondent and Kane Hull leave the location together returning to the blue Volvo. One of them is heard to say “that fucking bastard got me locked up last time”.

The Volvo leaves the area at speed but returns 10 minutes later. Two males enter the courtyard area together who the prosecution will assert are the respondent and Kane Hull. Both males are now wearing trousers instead of shorts, are wearing face masks and have their hoods up. The male the prosecution say is the respondent is identified by the fact he is wearing the same distinctive jacket and trainers he was wearing 10 minutes earlier.

The male the prosecution say is Kane Hull, as he has been identified by a Police officer, runs straight at Ryan Kirkpatrick with a knife and stabs him. He then appears to chase Ryan Kirkpatrick around the courtyard before stabbing him a

further 3 times at least. CCTV shows Kane Hull walking towards Ryan Kirkpatrick with a knife in his hand, the respondent must have seen the knife in Kane Hull's hand before the stabbing.

The respondent enters the courtyard seconds after Kane Hull and remains within meters of him during the attack on Ryan Kirkpatrick.

Immediately after the attack, both males run from the courtyard and leave the area in the same blue Volvo in which they arrived. Within 30 minutes of the incident this vehicle is found burnt out.

Evidence shows that the respondent and Kane Hull remain together after the incident and make their way to Northern Ireland and then onto Ireland using stolen vehicles where they were eventually detained together.

The prosecution case is that the respondent was present at the incident 10 minutes before the fatal stabbing, witnessing the initial assault. The respondent then left the area with Kane Hull and returned having concealed his identity; by this point Kane Hull was in possession of a knife. The actions of the respondent are of someone who knew something serious was going to happen. He was present and in close proximity to Kane Hull when he inflicted the fatal blows. Whilst the respondent was not directly involved in the physical attack on Ryan Kirkpatrick his presence at the scene was one of support and encouragement, and assistance if necessary, to Kane Hull. Were that not the case then he would have remained in the vehicle waiting for him and would not have concealed his identity.

The respondent remained with Kane Hull after the incident in full knowledge of what had just happened and in fact fled the country with Kane Hull and remained on the run until arrested in Ireland."

17. Discussion

Section 11 of the Act of 2003 mandates clarity in an EAW or TCA warrant. The requirement for clarity serves two purposes:

- (i) It allows the Court to carry out its functions under the act endorsing the warrant and establishing correspondence and it also allows to court to permit the respondent to challenge his surrender on grounds such as the rule of specialty (s.22), ne bis in idem and extraterritoriality

In this regard, the respondent is not claiming the following either in his points of objection or the affidavit or the submissions:

- He is not claiming that he is being surrendered for "other" offences;
- He is not claiming that the issuing judicial authority has included offences in the TCA warrant for which he is not to be charged in the issuing state;

- He is not claiming that there is going to be any breach of the rule of specialty (Section 22 of the Act of 2003) if he is surrendered;
 - He is not claiming that the UK authorities have been inaccurate in any manner in the description of the offences;
 - The respondent has raised no issue about extraterritoriality (S.44) and for reasons outlined below his correspondence argument is without merit.
- (ii) The respondent also has the right to know the reason for his arrest, he knows that:
- He faces a murder charge.
 - He knows that if the trier of fact is not satisfied to the requisite standard of proof as to the essential ingredients of murder charge he will face a manslaughter charge.
 - He knows that if the trier of fact is not satisfied to the requisite standard of proof as to the essential ingredients of a murder or a manslaughter charge, he will face a charge of assisting an offender contrary to Section 4 of the Criminal Law Act 1967.

The UK law on the issue of alternative verdicts in these circumstances is clearly set out in the TCA warrant by reference to Section 4 of the Criminal Law Act 1967. Section 4 of the 1967 Act states:

“4 Penalties for assisting offenders.

- (1) Where a person has committed a relevant offence, any other person who, knowing or believing him to be guilty of the offence or of some other relevant offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence.
- (1A) In this section and section 5 below, “ relevant offence ” means
- (a) an offence for which the sentence is fixed by law,
 - (b) an offence for which a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by section 33 of the Magistrates' Courts Act 1980).
- (2) If on the trial of an indictment for a relevant offence the jury are satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) above of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).
- (3) A person committing an offence under subsection (1) above with intent to impede another person’s apprehension or prosecution shall on conviction on indictment be liable to imprisonment according to the gravity of the other person’s offence, as follows:

- (a) if that offence is one for which the sentence is fixed by law, he shall be liable to imprisonment for not more than ten years;
- (b) if it is one for which a person (not previously convicted) may be sentenced to imprisonment for a term of fourteen years, he shall be liable to imprisonment for not more than seven years;
- (c) if it is not one included above but is one for which a person (not previously convicted) may be sentenced to imprisonment for a term of ten years, he shall be liable to imprisonment for not more than five years;
- (d) in any other case, he shall be liable to imprisonment for not more than three years."

18. It is clear from the warrant and additional information that the respondent faces a murder charge, that he will only face a manslaughter charge as an alternative to the murder charge and will only face a Section 4 charge as a further alternative. This Court takes the view that the information available allows the Court to fulfil its functions under the Act of 2003. Further, the Court finds that the respondent is fully aware of the reason for this arrest. In addition to written and oral submissions received on this issue, the oral submissions of counsel for the co-respondent, Mr. Kane Hull, were also adopted in this matter.

19. It is submitted, by the respondent, that there should be a narrative or set of facts for each of the offences. This, in the Court's view, would be superfluous. Further, in the view of the Court, there is no rule of law or practice that prohibits a narrative of information or set of facts giving rise to two or more offences. No caselaw has been advanced by the respondent or the co-respondent that prohibits alternative charges based on a single narrative being utilised in a TCA warrant.

20. It is submitted by the respondent that it is in order for the Court to surrender on the murder charge but not on the alternative charge of manslaughter or the charge of assisting an offender contrary to Section 4 of the Criminal Law Act 1967. In the view of this Court, should surrender be refused on the manslaughter and Section 4 charges, the following scenarios result:

- (i) The trier of fact would not be entitled to consider alternative verdicts to the murder charge. This would be an affront to common sense and against the interests of justice. This would also potentially be against the interests of the respondent as, often times, the defence team will offer a prosecutor a reduced charge of manslaughter or of assisting the principal offender or this may be urged upon a trier of fact. The respondent would be denied this opportunity.

Or,

- (ii) The trier of fact can proceed with alternative charges upon surrender. This would result in an unfairness in the EAW/TCA warrant process to the respondent as he

would not be aware of the prospect of alternative charges and would effectively not know the full reasons for his arrest and surrender

21. In this Court's view, there is no law or logic in support of the respondent's submissions on this point. There is no ambiguity about any of the matters set out in the TCA warrant. The warrant itself and the additional information of the 11th of January 2022 show in clear terms that the victim was subjected to an unlawful killing on the 18th of September 2021. The UK authorities wish to prosecute the respondent for the offence of murder and for the alternative offences of manslaughter and of assisting an offender.
22. The Court is satisfied to dismiss this ground of objection and surrender is not prohibited by Section 11 of the Act of 2003.

Is surrender prohibited by Section 38 – lack of correspondence?

23. Relevant statutory provisions

It should be noted at the outset that the law of this State provides for offences of murder contrary to common law and as provided for by Section 4 of the Criminal Justice Act, 1964, as amended, and manslaughter contrary to common law. The laws of this State also provide for an offence of assisting offenders contrary to Section 7 (2) of the Criminal Law Act, 1997, as amended, Section 7 (2) states:

7. [...] (2) Where a person has committed an arrestable offence, any other person who, knowing or believing him or her to be guilty of the offence or of some other arrestable offence, does without reasonable excuse any act, whether in or outside the State, with intent to impede his or her apprehension or prosecution shall be guilty of an offence."

The laws of this State also allows for alternative verdicts on indictment for murder. In this respect, section 7(3) of the same Act provides:

- "(3) If, upon the trial on indictment of an arrestable offence, it is proved that the offence charged, or some other offence of which the accused might on that charge be found guilty, was committed but it is not proved that the accused was guilty of it, the accused may be found guilty of an offence under subsection (2) of which it is proved that he or she is guilty in relation to the offence charged, or that other offence."

Section 9 (2) of the Criminal Law Act, 1997, as amended, further provides that:

- (2) If, on an indictment for murder, the evidence does not warrant a conviction for murder but warrants a conviction for any of the following offences
 - (a) manslaughter, or causing serious harm with intent to do so, or
 - (b) any offence of which the accused may be found guilty by virtue of an enactment specifically so providing (including section 7 (3)), or

- (c) an attempt to commit murder, or an attempt to commit any other offence under this section of which the accused might be found guilty, or
- (d) an offence under the Criminal Law (Suicide) Act, 1993, the accused may be found guilty of such offence but may not on that indictment be found guilty of any offence not specified in any of the foregoing paragraphs.”

Section 4 (1) of the UK Criminal Law Act of 1967, which provides for an offence of assisting an offender is identical in all material ways to Section 7 (2) of the Criminal Law Act, 1997 in this jurisdiction. Section 4 (2) of the UK Criminal Law Act of 1967, which provides for alternative verdicts is identical in all material ways to 7 (3) of the Criminal Law Act 1997 in this jurisdiction.

24. Section 38 of the 2003 Act reads:

“38.—(1) Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless—

- (a) the offence corresponds to an offence under the law of the State, and—
 - (i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or
 - (ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,
- (b) in the case of a European arrest warrant, the offence is an offence to which paragraph 2 of Article 2 of the Framework decision applies and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years, or
- (c) in the case of a Trade and Cooperation Agreement arrest warrant, the offence is an offence to which paragraph 5 of Article LAW.SURR.79 of the Trade and Cooperation Agreement applies and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than three years.

(2) The surrender of a person to an issuing state under this Act shall not be refused on the ground that, in relation to a revenue offence—

- (a) no tax or duty of the kind to which the offence relates is imposed in the State, or
- (b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.

(3) In this section “revenue offence” means, in relation to an issuing state, an offence in connection with taxes, duties, customs or exchange control.”

The law concerning proof of correspondence of offences is well established. The starting point is s. 5 of the Act of 2003 which provides:

“5. — For the purposes of this Act, an offence specified in a relevant arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the relevant arrest warrant is issued, constitute an offence under the law of the State.”

25. Regarding the offence of murder/manslaughter, in the context of the issue of correspondence, in the respondent's written submissions it is stated that it is clear from part E.II of the warrant that there is no evidence in relation to manslaughter per se. It is further submitted that the additional information of the 11th of January 2022 confirms that the evidence on which these offences are based is the same. In any event, the warrant and further information only disclose a single killing. The respondent argues that in the circumstances, it is difficult to see how surrender can be ordered for an offence of murder contrary to Section 4 of the Criminal Justice Act, 1964, and manslaughter contrary to common law, even if correspondence was shown in relation to both. It is further submitted that there is only one killing, therefore, surrender cannot be ordered in respect of both.
26. It was however accepted by senior counsel for this respondent during the oral hearing some of these points were unsustainable and were no longer being relied on by the respondent. Senior counsel for the respondent accepted that there was sufficient information within the warrant and the additional information to support the applicant's submissions that the candidate offences in this jurisdiction for the murder and manslaughter offences in the TCA warrant would be murder contrary to common law and manslaughter contrary to common law. The respondent accepted that on the issue of correspondence surrender can be ordered in relation to both murder and manslaughter.
27. In written submissions, the respondent states that if there is a joint enterprise between the respondent and Kane Hull in relation to murder/manslaughter, then the respondent is criminally liable for same. He argues that this makes correspondence in relation to any post murder/manslaughter offence offending problematic.
28. The respondent further states in written submissions that the assertion of the respondent fleeing the United Kingdom cannot be taken to have been done with the intent to impede the apprehension of the Kane Hull for the purposes of section 7(2) of the Criminal Law Act, 1997, as amended. In any event, the warrant at part E.II relies upon leaving the scene with Kane Hull's presence in the aftermath of the stabbing and presence when the car was burned out.. With regard to the setting the car on fire, it is submitted that the height of the information is that the respondent was present when this occurred. It is submitted that there is no allegation that the respondent set the car on fire. In the circumstances, the presence of the respondent is not sufficient for criminal responsibility under Section 7(2) of the Criminal Law Act, 1997, as amended. This is the crux of the respondent's submissions.

29. In this regard, the respondent places reliance on *DPP v Troy Jordan & David Deegan* [2006] IECCA 71, [2006] 3 IR 425, in which the Court of Appeal was not of the opinion that the facts of the case were sufficient to imply encouragement on behalf of the appellant and the learned Circuit Court Judge should have acceded to the application for a direction. Geoghegan J. concluded at para 10 that:

"10. This court is of the view that the evidence was not such as left two options open to a jury in circumstances where of course it would then have been proper to have left the matter to the jury. For the jury to have held, as presumably it must have done, that the evidence relating to each of these accused amounted to proof of the necessary implied encouragement, the jury could only have been engaging in speculation. All that was proved was presence. There was no evidence of gambling or fleeing from arrest. The court is of the view that the jury could not beyond reasonable doubt have come to a conclusion that there was encouragement on the part of the accused. Therefore, in the court's view, the application for a direction to enter verdicts of not guilty in respect of count no. 1 ought to have been acceded to. The court will, therefore, treat the respective applications for leave to appeal as the respective appeals, will allow each appeal and will quash the respective convictions."

The respondent also referred to the learned Circuit Court Judge's ruling, in which he recalled what he believed was the relevant evidence to be taken into account with presence:

"The relevant passage in the trial judge's ruling reads as follows:-

"Moving on to the remaining accused persons and the remaining submission made by counsel in the case on behalf of each of them, that the mere presence at the place at Brockagh cannot and does not amount to evidence upon which a jury could act to conclude that they are guilty of the remaining charge of cruelly ill treating two dogs found there or as to cause them unnecessary suffering.

In respect of each of these accused persons their presence there at Brockagh is not an issue. That concession has been made on the evidence and in the face of the evidence adduced by the prosecution. Brockagh, as we know from the evidence, is a place of some remoteness. On the evidence we know that it is two miles at least to the nearest village, be it Alanwood or Robertstown. It is removed from the public road down a two to three hundred yard laneway and it is in a cluttered hay or machinery shed to the rear of the farmyard of Mr. Farrell, the owner.

The prosecution also point to the peculiar time of day and the day of a weekend of which they say a significance can be attached. And finally, the event itself has a particular degree of particular uniqueness. They are two fighting dogs, it would seem one match is in play and available on the day, and it is an event attended by a small group of men."

30. In this Court's view the test for participation in criminal offences is set out succinctly in an extract from the 2nd edition of Charleton and McDermott's Criminal Law and Evidence, wherein the learned authors state at para. 8.32 as follows:

"[8.32] It must be proved that the accused participated in the offence committed, mere knowledge that such a crime was about to be committed is insufficient".

The authors continue at para. 8.36:

"[8.36] Where a person is actually present when the crime is committed by the actor, whether his mere present will amount to aiding and abetting depends upon the circumstances but as a general proposition some act of aiding and abetting must occur over mere presence."

It is further stated at para. 8.39:

"[8.39] Participation thus can be a matter of fine degree, as to whether a person is present merely or is present as encouragement."

The authors refer to the case of *Re ACS* 1969 7 CRNS 42, as an example of a situation whereby being present was considered an act of encouragement. In that case a group of university students were present during the occupation of an university computer centre and on that basis they were charged with mischief in obstructing lawful use of the centre. Although they did not actually take part in erecting the barricades, they were convicted of aiding and abetting. Since the accused gave the occupation the strength of numbers that it required to succeed such presence in those circumstances amounted to aiding and abetting. However, the accused must have intended to aid. If the effect is that the perpetrator is aided without the accused having the intent to aid, then the crime is incomplete as regards the accused (*Mewett and Manning, Mewett & Manning on Criminal Law* 3rd edn 1994).

31. This test, as set out above, is entirely in accordance with the test set out in the case of *DPP v Troy Jordan & David Deegan* [2006] IECCA 71, [2006] 3 IR 425 at para 9, thereof:

"9 It is trite law that a person cannot be convicted of an offence by merely being present when it is being committed. There must be some evidence either of common design or of aiding and abetting in the offence. The court would agree with the view clearly taken by the trial judge that the proven encouragement which would be necessary need not be express. It could be implied from the circumstances. In one sense this is the typical kind of offence where an implication of such encouragement might more easily be raised than in most other circumstances. That is the way counsel for the prosecution ran the case and the trial judge considered that there was enough evidence to support such implied encouragement to allow the case go to the jury. The question the court has to consider is whether the trial judge was right in that ruling."

32. Caselaw on correspondence

Moving on the established jurisprudence in this jurisdiction on the issue of correspondence, this Court wishes to commence a review of the authorities by starting with the words of Henchy J. in *Hanlon v Fleming* [1981] IR 489, wherein he stated at page 495 of the report that:

"The third point raises the question whether the specified offence has the required correspondence with an offence under the law of this State. The relevant decisions of this Court, such as The State (Furlong) v. Kelly 3 [1971] I.R. 132. , Wyatt v. McLoughlin 4 [1974] I.R. 378. and Wilson v. Sheehan 5 [1979] I.R. 423. show that it is a question of looking at the factual components of the offence specified in the warrant, regardless of the name given to it, and seeing if those factual components, in their entirety or in their near-entirety, would constitute an offence which, if committed in this State, could be said to be a corresponding offence of the required gravity."

Indeed, Henchy J. stressed in his judgment in that case that correspondence will not be established by looking at the name of the offence itself under the law of the issuing state. Rather, the description of the facts for the offence is the key consideration. This was reiterated in *Attorney General v Dyer* [2004] IESC 1, [2004] 1 IR 40, wherein Fennelly J. stated at para. 17:

"[T]he correspondence inquiry depends on the facts alleged in the warrant."

33. Furthermore, this Court does not engage in an analysis as to whether a prima facie case has been proven against any person who is sought for trial in another country. This is made clear by the Supreme Court in *Minister for Justice Equality and Law Reform -v- Stafford* [2009] IESC 83 ("Stafford"), wherein Denham J. stated:

"14. Article 8 of the Framework Decision and section 11(1)(f) of the Act of 2003, as amended by s.72 of the Criminal Justice (Terrorist Offences) Act 2005, require that there be a description of the circumstances in which the offences or alleged offences were committed. The matter of time and place are important as they are central to issues such as the statutes of limitation and jurisdiction.

15. It is required that there be a description of the acts upon which the warrant is based. This is similar to the situation under the Extradition Act 1965, as amended, and indeed classically in extradition law. A description of the acts, or the acts alleged, are the facts upon which the executing judicial authority may apply the law. By describing the acts the facts are before the court and so a decision may be made as to whether there is, for example, double criminality. I am satisfied that the facts on the warrant in this case are sufficient to describe the circumstances in which alleged offences were committed.

[...]

19. *The question which arises for determination is whether the acts alleged on the warrant show a link with the requested person. It is not necessary to show a prima facie case. It is not necessary to show a "strong" case. The issue of guilt or innocence is for the jury in the requesting state."*
34. In *The Minister for Justice & Equality -v- Harrison* [2020] IECA 159, Donnelly J. stated the following at para. 48 about the Stafford line of jurisprudence previously mentioned at para. 33 of this judgment:
- "Subsection 11(1A)(e) of the Act of 2003 has been the subject of repeated pronouncements by the Supreme Court and High Court. It was quite correctly not questioned at this appeal that the subsection did not require a statement of the evidence in relation to the offences. It was accepted, in accordance with the decision of the Supreme Court in Minister for Justice and Equality v. Stafford [2009] IESC 83, that the EAW does not have to establish a strong case or even a prima facie case. In Stafford, the case against the requested person was a circumstantial one and the Supreme Court accepted that nonetheless, the requirements under the Act of 2003 and Framework Decision were satisfied."*
35. In the case of *Minister for Justice Equality and Law Reform -v- Dundon* [2005] IESC 13, at para 12.3 of the judgment, Denham J (as she then was) stated:
- "12.3 Counsel for the respondent also raised a 'strength of the case argument'. It was submitted that the learned trial judge erred in finding that there was no requirement to consider the case against the respondent. It was argued by counsel that this was a one witness case and that that witness has resiled from her statement and, as his wife, is not compellable.*
- I would first of all note on the facts that there is no basis to find that this is a one witness case. However, on the law I am satisfied that the adequacy of the evidence against the person sought is not a matter for consideration on these proceedings under the Act. Further, there is no requirement that the requesting state establish a prima facie case. [...]."*
36. In *Minister for Justice Equality & Law Reform -v- Hamilton* [2005] IEHC 292, the Court expressed itself to be largely unconcerned as to the failure of the warrant to describe the respondent's role in the offence in circumstances where the offence was one of murder, which in any event was not only a corresponding offence but also a listed offence. Peart J. explained what was required in the following terms at paras. 14 and 15:
- "14. My view of the matter is that the purpose of the warrant is not simply that the respondent might be aware of why his extradition is requested, but that this Court when asked to endorse the warrant for execution might be satisfied that there is an offence alleged in which the proposed respondent is implicated in some way. When the application for endorsement of the warrant is made initially under section 13 of the Act, the Court must be satisfied that the warrant is in the proper form before it*

can endorse it for execution. At that stage, the Court itself must be in a position, from the manner in which the warrant is completed, to see in what way the offence alleged involves the person named therein.

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

Of particular importance to this case the Court also stated:

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

37. Further, in the case of *Minister for Justice and Equality -v- Baron* [2012] IEHC 180, subsequently approved by the Supreme Court, Edwards J. was dealing with a case where Article 2.2 of the 2002/584/JHA Council Framework Decision of 13th June 2002 on the European arrest warrant and the surrender procedures between Member States as amended by Council Framework Decision 2009/299/JHA of 26th February 2009 ("the Framework Decision") was invoked for conspiracy to commit a number of drug related offences. A point of objection was raised by the respondent that the degree of involvement, time and place of offences was not sufficiently specified as per s.11(1A)(f) and Article 8(1)(e) of the Framework Decision. Edwards J. analysed the relevant caselaw on the information which was required to be considered in a warrant itself, and in particular the caselaw holding circumstantial evidence as sufficient. The Court went on to find that it is not necessary for a warrant to detail all evidence linking a respondent to offences, and that a general outline is sufficient. Edwards J. stated very clearly that the Court is not concerned with the degree of involvement which would be required to be sufficient for a trial when he noted as follows in relation to the facts of that case:

"It is sufficient if the information both specifically asserts a link and gives a general outline of the basis for that assertion, or alternatively sets forth sufficient alleged circumstantial facts that would, if proven, allow a court to infer the necessary link. It is not necessary, however, to provide every detail of the proposed evidence by means of which the circumstances in question might be established in Court."

38. This Court has already determined that there is no ambiguity about any of the matters set out in the TCA Warrant. From the TCA warrant and the additional information of the 11th of January 2022, the Court can determine that:
- (i) The respondent is alleged to have seen the victim and then telephoned Mr. Hull to attend at the scene for the first altercation between the parties. In addition, when he returned with Mr. Hull for the second (and fatal) assault, he was wearing trousers (instead of shorts), a face mask and had his hood up. He was aware of the fact that the co-respondent, Mr. Hull, had a knife. All of the foregoing shows that the respondent was engaged in a joint enterprise with Mr. Hull for the purposes of the murder and manslaughter charges. It would be a matter for trial in the United Kingdom as to whether he is found guilty of the relevant offences.
 - (ii) The information shows that the respondent knew that the co-respondent, Mr. Hull, had killed Mr. Kirkpatrick. The respondent knew that there was a feud between Kane Hull and the victim. The TCA warrant states that the respondent also assisted Kane Hull after the stabbing by leaving the scene with him and thus providing support to him. The warrant further states that having fled in the vehicle linked to Kane Hull, this vehicle was later found and had been set on fire. Liam Porter was present when this vehicle was set alight. The TCA warrant states that the respondents remained at large together before leaving the UK to travel to Northern Ireland and then Ireland in a stolen vehicle.
39. In light of the established jurisprudence dealing with Section 5 and 38 of the Act of 2003 confirming that this Court should not look for a prima case establishing guilt but rather a link between the offences and the respondent, this Court having considered all available information from the TCA warrant and additional information finds as follows:
- (i) The respondent would be charged with murder contrary to common law in this jurisdiction.
 - (ii) An alternative charge of manslaughter contrary to common law would be preferred in this jurisdiction.
 - (iii) A further alternative charge of assisting an offender contrary to section 7 of the Criminal Law Act 1997 would be preferred in this jurisdiction.
40. It may be that the respondent will not be convicted of these matters by a trier of fact either at direction stage or by jury. Decision on guilt or innocence are not matters for this Court. For the question of correspondence in a TCA warrant there is sufficient information

before this Court to determine that correspondence can be established between the offences referred to in the TCA warrant and offences under the law of this State. This point of objection is dismissed

41. It, therefore, follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the Kingdom of Great Britain and Northern Ireland.