

THE HIGH COURT

[2022] IEHC 159
[2021 No. 257 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

KANE LUKE HULL

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 28th 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 the Trade and Co-Operation agreement warrant dated 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:
 - (i) Part e of the warrant states one offence.

- (ii) Under this heading it goes on to say Murder...1 offence and thereafter manslaughter ... 1 offence.
 - (iii) The warrant states this warrant relates to in total: two offences.
 - (iv) The description of the circumstances of the offence at Paragraph (e) state that there is both an assault and later a fatal stabbing.
 - (v) Paragraph E.II states that manslaughter "is a direct alternative to the Murder offence which the jury might be asked to consider."
- 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 regards that the Court make enquiry as to correspondence in respect of the offences in the warrant.

9. **Is surrender prohibited under Section 11 of the 2003 Act:**

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.

(3) [...]

(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 paragraphs 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 paragraphs 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."

Relevant Information

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

Part (e) of the warrant states that it relates to two offences:

1. Murder, contrary to common law – 1 offence
2. Manslaughter, contrary to common law - 1 offence.

The TCA warrant goes on to describe the circumstances in which the offences 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.

15 minutes before the fatal stabbing, CCTV shows Liam Porter and the requested person, Kane Hull, at the scene of the offence. CCTV shows the requested person assault Ryan Kirkpatrick and both the requested person and Liam Porter then leave the scene before returning later. A vehicle associated with the requested person 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 the requested person, Kane Hull. Part of this incident is shown on CCTV. Liam Porter is wearing a distinctive top on both occasions. A police officer has identified the requested person, Kane Hull, from CCTV as being the person responsible for the stabbing. The officer has been able to identify the requested person as his hood slips during the incident.

The requested person has approached and stabbed Ryan Kirkpatrick with a knife up to 4 times. Fatal injuries resulted at the scene.

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

The requested person, Kane Hull and Craig Porter 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 offences are further described at part (e) II of the warrant as follows:

“Murder contrary to Common Law. Kane Hull is said to have assaulted the victim with a knife causing injuries which led to the victim’s death.

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

15. A section 20 request seeking further information issued on the 7th of December 2021. Though issued in relation the co-respondent, Liam Porter, the response contains material of relevance to the respondent in this case. The Court asked for additional information regarding 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:

“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.”

Discussion

17. 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 the Court to permit the respondent to challenge his surrender on grounds such as the rule of speciality (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 2003 Act) 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. 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, i.e. if the trier of fact is not satisfied of the essential ingredients for the crime of murder to the requisite standard of proof, the trier of fact may be invited to consider an alternative charge of manslaughter.

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.

18. In his written submissions, the respondent states that allied to the question of the number of offences is the question of what are the actual offences to which the Court must look for correspondence (in this later regard, is it the earlier assault or the stabbing). In this regards, he refers to the decision of the Supreme Court in *Minister for Justice Equality and Law Reform -v- Desjatnikovs* (already cited at paragraph 12 herein), in which Denham J. said at para 6:

"[6] Thus the warrant expressly states that it refers to one offence, but it is not clear which is the offence. Is it the initial facts relating to the three alleged occasions on which he handed out to himself cash from the cash desk of the pawnshop? Yet there are also facts about an allegedly unrepaid loan. I agree with the finding of the trial judge that it is not clear to which set of facts the one offence relates, i.e. the taking of cash or the unrepaid loan."

19. The respondent is therefore suggesting that there is ambiguity in the warrant in that the Court cannot determine the facts that are relevant to the charges of murder and or manslaughter in circumstances where there was an earlier assault prior to the killing. In the Court's view, this is a submission without any merit. The acts that are relevant to the charges in relation to this respondent are the acts that caused the death of the victim, that is the four acts of stabbing. Any act of homicide requires an act that causes the death, the previous assault in this matter did not cause the death and therefore is only relevant in so far as it provides a background to the offences themselves.
20. The respondent further submits that the warrant itself is clear in that the focus is an allegation of murder with manslaughter as an alternative. He submits however that in Part E. II no facts are given to ground the manslaughter aspect but are given for murder. It is therefore submitted that there should be a narrative or set of facts for each of the offences, i.e. a set of facts for the murder charge and a set of facts for the manslaughter charge. Such a requirement in the Court's view, would be superfluous and unnecessary on the facts of this case.
21. The respondent further submits that surrender should be refused as manslaughter is not contemplated as the subject of a separate charge but as an alternative to a separate charge. In the view of the Court, there is no rule of law or practice that precludes a warrant containing a narrative of information that can give rise to two or more offences. No caselaw has been advanced by the respondent that suggests a prohibition on surrender when alternative charges are based on a single narrative or set of facts in a EAW or TCA warrant.
22. During the course of oral argument the Court indicated that in the Court's view, in this case, one set of facts was capable of given rise to potential culpability for two offences to be charged as alternatives. In response the respondent submitted that information in relation to the issue of manslaughter being preferred as an alternative charge, should be included in para (f) of the warrant i.e. under the heading other circumstances relevant to the case. This Court does not accept this submission. The IJA has indicated that the trier of fact may consider charge of manslaughter in the event that the respondent is acquitted or murder. The IJA has indicated appropriately and clearly that it is the intention of issuing state to prefer such a charge in those circumstances, it is far preferable that this information is contained in Para (e) as this information is critical in understanding the nature of the charges that the respondent could face.
23. It is further 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. Should surrender be refused on the manslaughter charge, the following scenarios would result:

- (i) The trier of fact would not be entitled to consider alternative verdicts to the murder. 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 urge same upon the 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 reason for his arrest and surrender

24. 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 murder and an alternative charge of manslaughter.
25. The Court is satisfied to dismiss this ground of objection and that surrender is not prohibited by section 11 of the 2003 Act.
26. **Is surrender prohibited by Section 38 – lack of correspondence.**

Relevant Statutory Provisions

During the course of the oral hearing, counsel for the respondent indicated that he not pushing the issue of correspondence, nonetheless this Court proposes to deal with the issues raised in oral and written submissions in full.

27. 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. In this respect, Section 9(2) of the Criminal Law Act, 1997 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.”

28. Section (6) 2 of the 1967 Criminal Law Act of England and Wales contains similar provisions to its Irish counterpart:

“6 Trial of offences.

[...](2) On an indictment for murder a person found not guilty of murder may be found guilty—

- (a) of manslaughter, or of causing grievous bodily harm with intent to do so; or
- (b) of any offence of which he may be found guilty under an enactment specifically so providing, or under section 4(2) of this Act; or
- (c) of an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty; but may not be found guilty of any offence not included above.”

29. In relation to the law on correspondence the relevant statutory provisions are set out as follows, Section 38 of the Act of 2003 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."

In addition s. 5 of the Act of 2003 which provides:

- "5. or 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."
30. Regarding the offence of murder/manslaughter, in the context of the issue of correspondence, it is stated in the respondents' written submissions that section 5 of the Act of 2003 particularly states that the standard required for correspondence is that the particulars in the warrant would constitute an offence in the state. Therefore, it is submitted it is not sufficient that the facts alleged might or could be an offence. The respondent further submits that, from part E.II of the warrant, it is clear that there is no evidence in relation to manslaughter per se as 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 common law/s.4 of the Criminal Justice Act, 1964, and manslaughter contrary to common law, even if correspondence was shown in relation to both. It is submitted that there is only one killing, therefore, surrender cannot be ordered in respect of both.

Caselaw on correspondence

31. This Court wishes to commence a review of the authorities on the established jurisprudence in this jurisdiction on the issue of correspondence, by reference to 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 re-iterated in *Attorney General v Dyer* [2004] IESC 1, [2004] 1 IR 40, wherein Fennelly J. stated at para. 17 that "[T]he correspondence inquiry depends on the facts alleged in the warrant."

32. 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."*

33. *In The Minister for Justice & Equality -v- Harrison* [2020] IECA 159, Donnelly J. stated the following about the *Stafford* line of jurisprudence previously mentioned at para 33 of this judgment: at paragraph 48:

"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."

34. It will be a matter for the trial in the issuing state as to whether these allegations are proven against the respondent. For correspondence purposes, there is sufficient material to establish same in accordance with the case law of the superior courts.

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. The nature of the evidence in relation to each individual offence relied on the evidence in furtherance of the conspiracy as a whole, and further dealt with circumstantial or inferential evidence arising from the facts which were known and set out in the European arrest warrant. 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 is sufficient.

38. 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.”

39. This Court has already determined that there is no ambiguity about any of the matters set out in the TCA Warrant. From the TCA and the additional information of the 11th of January 2022, the Court can determine that:

- (i) Craig Porter is alleged to have seen the victim and then telephoned Kane Hull to attend at the scene for the first altercation between the parties. During this altercation Kane Hull assaulted the victim.
- (ii) There was a history of ill will between Mr. Hull and the victim.
- (iii) When Mr. Porter and Mr. Hull returned they were wearing different clothes and a face mask.
- (iv) When Mr. Hull returned for a second time he stabbed the victim four times.
- (v) This incident is captured on CCTV and Mr. Hull is identified from same.

- (vi) Both Mr. Hull and Mr. Porter, arrived to the scene and left the scene in a car associated with Mr. Hull. This car was later found burnt out.
- (vii) Both Mr. Hull and Mr. Porter fled the country and used a stolen vehicle in this regard.

40. 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 facie* 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.

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.