

THE HIGH COURT

[2022] IEHC 531

[2021 No. 141 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ALEXANDER JAMES KEANE

RESPONDENT

JUDGMENT of Ms. Justice Biggs delivered on the 12th day of May, 2022

1. By this application, the applicant seeks an order for the surrender of the respondent to Northern Ireland pursuant to a United Kingdom Trade and Cooperation Agreement Warrant dated 12th of January 2021 (“the TCA warrant”). The TCA warrant was issued by George Conner, District Court Judge, as the issuing judicial authority.
2. The TCA warrant seeks the surrender of the respondent in order to prosecute him in respect of alleged fraud-type offences.
3. The TCA warrant was endorsed by the High Court on the 9th day of June 2021. The respondent was arrested on the 29th of July 2021 and brought before the High Court on the 30th of July 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. Each of the offences 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. Points of objection to surrender were filed, dated 14th September, 2021. The respondent objected to surrender on the following grounds:

- That surrender is prohibited by Section 38 of the European Arrest Warrant Act 2003 on the grounds of an absence of correspondence.
- That surrender is prohibited by Section 44 of the European Arrest Warrant Act on the grounds of the commission of the alleged offence outside the issuing state.
- That the warrant does not contain requisite detail and, in particular, the detail provided at Section (f) is inadequate and/or it is incorrect and/or there is no information to suggest that a decision has been made to prosecute him in Northern Ireland and/or the basis therefore and/or how he might be prosecuted for an offence allegedly committed within this State.
- The respondent otherwise puts the Minister on "full proof" of all relevant matters.

9. The crux of the respondent's case is that his surrender is prohibited *inter alia* by sections 38 and 44 of the European Arrest Warrant Act, 2003. He submits that the offences do not meet the statutory test for correspondence as ordained by the Act. He submits that further, or in any event, the offences are alleged to have occurred in this State, and *a fortiori*, outside the issuing state, such that they fall foul of the Section 44 reciprocity test.

10. Relevant information

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

1. On the 8th day of June 2016, [the respondent] dishonestly made a false representation, namely, that cheque number 022071 was a good and valid order for £3,000, with the intention, by making the representation, to make a gain for himself or another or to cause loss to WC Agriplant Limited or to expose them to a risk of loss, in breach of Section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
2. Between the 2nd day of June 2016 and the 26th day of June 2017, converted criminal property, namely, a JCB 526 Teleporter, contrary to Section 327 (1) (c) of the Proceeds of Crime Act, 2002.

11. Section 2 of the Northern Ireland Fraud Act 2006 states:

“2. Fraud by false representation

(1) A person is in breach of this section if he—

(a) dishonestly makes a false representation, and

(b) intends, by making the representation—

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

(2) A representation is false if—

(a) it is untrue or misleading, and

(b) the person making it knows that it is, or might be, untrue or misleading.

(3) “Representation” means any representation as to fact or law, including a representation as to the state of mind of—

(a) the person making the representation, or

(b) any other person.

(4) A representation may be express or implied.

(5) For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention)."

Section 327(1)(c) of the Northern Ireland Proceeds of Crime Act states:

"1. A person commits an offence if he—

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts criminal property;

(d) transfers criminal property;

(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland."

12. The warrant describes the circumstances of the offences in the following terms:

"On 17th May 2016 WC Agriplant Limited, Portarlinton, County Offaly, purchased a JCB 526 Teleporter from a company in Ballycastle, County Antrim. WC Agriplant Limited paid £11,283.22 for the vehicle and it was agreed that they would be responsible for collecting it from Ballycastle.

Alexander James Keane (Keane) was subsequently contracted by WC Agriplant Limited to collect the Teleporter from Ballycastle and deliver it to the company's premises at Portarlinton. Keane collected the Teleporter in Ballycastle on 2nd June 2016.

By 7th June 2016, the Teleporter had not been delivered to WC Agriplant Limited. Dawn Champ (Champ), accounts manager at WC Agriplant Limited, tried to contact Keane by telephone without success. Keane sent an email to the company at 0951 hours on 7th June 2016 indicating that he would deliver the Teleporter that same day. However, it was not delivered. On 8th June 2016 Keane telephoned Champ and alleged that his lorry, which had been carrying the Teleporter, had been stopped on the M50 and subsequently impounded in a customs yard. Keane told Champ that he would buy the Teleporter. Keane subsequently attended at WC Agriplant Limited's premises and gave Champ a cheque for £3,000, representing a deposit for the Teleporter.

Champ lodged the cheque into the company's bank account but subsequently received notification that it had not been honoured.

On 20th June 2016 Champ contacted Keane to advise that the cheque had been returned unpaid. Keane alleged that he was in the process of obtaining finance.

On 28th June 2016 Champ sent Keane an email requesting payment for the Teleporter. On 30th June 2016 she received a response which read "Dawn that should be through 48 hours. Thanks again Keane."

Champ sent further emails and text messages to Keane on 6th July 2016, 18th July 2016, 27th July 2016, 4th August 2016 and 11th August 2016 but received no response. On 14th August 2016, Keane sent a text to Champ which read "Sorry about delay on route Friday morning." Keane subsequently failed to attend at the company's premises on Friday 19th August 2016.

In October 2016, Keane contacted Champ and indicated that the Teleporter had been damaged in an accident. On 12th October 2016, Champ received a letter from Hunt & Co Solicitors, County Down, indicating that they acted for

Keane in relation an accident involving a JCB. The letter suggested that Keane was awaiting payment from his insurer and that payment in full would be made to WC Agriplant Limited in the near future.

Payment has never been made.

Keane was interviewed under caution on 26th June 2017. During interview Keane confirmed that he had collected the JCB 526 Teleporter from a yard in Ballycastle on 2nd June 2016. He claimed that the Teleporter was involved in an accident but that his insurer refused to provide cover. Keane claimed to have sold the Teleporter to an unidentified male from Armagh as "scrap".

He stated that he received payment of £3,200 for the Teleporter.

Police have made enquiries with Keane's insurer who confirmed that he has made no attempt to make a claim in respect of the Teleporter."

- 13.** By way of additional information dated 21st January 2022, the issuing judicial authority stated that both offences are alleged to have occurred in Northern Ireland. The letter also states:

"In respect of offence 1, Part III of the Criminal Justice (Northern Ireland) Order 1996 applies, a copy of which is appended to this correspondence. Part III of the Order creates jurisdiction over certain specific offences of dishonesty if a 'relevant event' occurred in Northern Ireland. At the time of the offence Mr. Keane was resident at 33 Oakwood Avenue, Bangor, County Down, Northern Ireland. His business, Keane Co Contractors Ltd, was registered to the same address. The cheque that Mr. Keane passed on 8th June 2016 was to be drawn on his sterling business account, held with Santander, Newtownards, County Down, Northern Ireland. This is a 'relevant event' which occurred in Northern Ireland, notwithstanding that Mr. Keane passed the cheque in Portarlinton, County Offaly.

In respect of offence 2. Keane was interviewed under caution on 26th June 2017.

During interview Keane claimed to have sold the Teleporter to an unidentified male from Armagh as "scrap" and that it was collected from his yard in Newtownards, County Down, Northern Ireland."

14. On the 10th May 2022, the following additional information was received from a Valerie Gibson, Solicitor with the Crown Solicitors Office:

"[T]hank you for your letter dated the 25th of March 2022. We are grateful for the additional time afforded to provide a response. We have taken instructions and our instructions are as follows, adopting the numbers in your letter:

1. *Mr Keane was interviewed under caution at Bangor PSNI Station on 26th June 2017. During interview under caution Mr Keane stated that he had collected the JCB Teleporter from Ballycastle, County Antrim and transported it to 501 Belfast Road, Bangor, County Down. He described 501 Belfast Road, Bangor as "our yard." Mr Keane stated that the Teleporter fell over in the yard at 501 Belfast Road, Bangor and was damaged. Mr Keane stated that he subsequently agreed with Dawn Champ of WC Agriplant Ltd that he would buy the Teleporter.*

Mr Keane claimed that he advertised the damaged Teleporter for sale, on either the Gumtree website or Donedeal website, "as a category 1 write-off and it was sold to a fella somewhere in Armagh. They collected it, I think it came to about £3,200." Mr Keane was asked to confirm where the male had collected the Teleporter and replied, "He came to the yard and collected it." He claimed that the male used a "rigid lorry, a beavertail" to transport the Teleporter.

Mr Keane was asked whether he knew the male who had purchased the damaged Teleporter or whether he had any contact details for the male. He responded "No, no" and indicated that he would attempt to obtain contact

details for this person following the interview. Mr Keane claimed that the male paid for the Teleporter in cash. Mr Keane was asked what he did with the cash and replied "Not 110% sure, not sure. It certainly didn't go to Dawn..."

Police later made efforts to conduct a second interview with Mr Keane but he refused to return to Northern Ireland. He never provided any further information about the male to whom he sold the Teleporter.

- 2. The sale is alleged to have taken place at 501 Belfast Road, Bangor, County Down.*
- 3. The property at 501 Belfast Road, Bangor, County Down does not belong to Mr Keane. Police believe that the property belongs to an associate of Mr Keane."*

15. Is surrender prohibited by Section 38 of the Act of 2003?

Section 38 (1) of the 2003 Act (as amended by S.I. 150 of 2021), provides:

"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,

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 3 years."

Correspondence must be established for the offences on the warrant. The correspondence inquiry for this application is governed by Section 5 of the 2003 Act (as amended), which provides:

“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.”

16. Candidate Offences

Offence 1 – The TCA warrant states that this offence is known as Fraud by false representation, and is contrary to Section 1 of the Fraud Act 2006. Part E of the TCA warrant provides the description of the circumstances in which the offences were committed and in relation to this first offence, the nature and legal qualification of the offence is described as follows:

“On the 8th day of June 2016, dishonestly made a false representation, namely, that cheque number 022071 was a good and valid order for €3,000, with the intention, by making the representation, to make a gain for himself or another or to cause loss to WC Agriplant Limited or to expose them to a risk of loss, in breach of Section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.”

It is submitted by the applicant that the first offence in the warrant corresponds with the following offences if committed within this jurisdiction:

- a. Theft - Section 4 Criminal Justice (Theft and Fraud) Offences Act, 2001; -

“Section 4 (1) Subject to Section 5 , a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it.

(2) For the purposes of this section a person does not appropriate property without the consent of its owner if—

(a) the person believes that he or she has the owner's consent, or would have the owner's consent if the owner knew of the appropriation of the property and the circumstances in which it was appropriated, or

(b) (except where the property came to the person as trustee or personal representative) he or she appropriates the property in the belief that the owner cannot be discovered by taking reasonable steps,

but consent obtained by deception or intimidation is not consent for those purposes.”

or

- b. Making gain or causing loss by deception – Section 6 Criminal Justice (Theft and Fraud) Offences Act, 2001; -

“A person who dishonestly, with the intention of making a gain for himself or herself or another, or of causing loss to another, by any deception induced another to do or refrain from doing an act is guilty of an offence.”

Offence 2 - The second offence in the TCA warrant is an offence of converting criminal property, contrary to Section 327(1)(c) of the Proceeds of Crime Act, 2002.

In relation to this second offence the nature and legal qualification of the offence is described as:

“Between the 2nd day of June 2016 and the 26th day of June 2017, converted criminal property, namely, a JCB 526 Teleporter, contrary to Section 327(1)(c) of the Proceeds of Crime Act 2002.”

It is submitted by the applicant that the second offence in the warrant corresponds with the following offence if committed within this jurisdiction:

- a. Money laundering occurring in State contrary to Section 7 Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 which provides:

“7. (1) A person commits an offence if—

(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:

- (i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;*
- (ii) converting, transferring, handling, acquiring, possessing or using the property;*
- (iii) removing the property from, or bringing the property into, the State, and*

(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.”

17. Caselaw

In *Wyatt v. McLoughlin* [1974] I.R. 378, Walsh J. stated that the test for correspondence was one of recognition insofar as it consists of assessing whether the facts set out on the warrant would amount to a criminal offence in the State. Walsh J. stated therein; -

“The District Court here has to be satisfied that an offence laid in a warrant sent here and endorsed for execution is so stated as to be recognisable as corresponding with an offence under our law. It must, therefore, contain such essential factual material as may be necessary to recognise whether or not the acts complained of are ones which, if committed in this country, would amount to a criminal offence.”

In addition, Walsh J. declared at p. 395 that the courts here, *“in proceedings such as these [are]...not at all concerned with the construction of English law.”* Instead, the test posited by Walsh J. focused on assessing the facts in the warrant to see if they were “recognisable” as a criminal offence in this jurisdiction.

The manner in which a correspondence inquiry may be undertaken was also addressed by Henchy J. in *Hanlon v. Fleming* [1981] I.R. 489, wherein he stated at page 495; -

*"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* [1971] I.R. 132, *Wyatt v. McLoughlin* [1974] I.R. 378 and *Wilson v. Sheehan* [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."*

This was re-iterated in *Attorney General v. Dyer* [2004] 1 I.R. 40, wherein Fennelly J. stated at para. 17; -

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

Fennelly J. accepted in *Dyer* that words used in an extradition warrant could be given their ordinary meaning so that they would be attributed the meaning that would, in the normal course of events, be ascribed to them under Irish law. Having considered the various authorities, Fennelly J. stated at para. 20; -

"[20] Normally, words used in an extradition warrant will be given their ordinary meaning. This enables the courts to give effect, without resort to extrinsic evidence, to extradition requests where words such as "steal," "rob" and "murder" are used. It is possible that such words have different meanings in the law of the requesting state, but, in the absence of anything suggesting that, the courts will examine correspondence by attributing to such words, when used in a warrant, the meaning that they would have in Irish law."

In *Wilson v. Sheehan* [1979] I.R. 423 the warrant provided by the English authorities alleged that the wanted person “*did rob Michael Barker of £281 in cash and immediately before doing so used force, to wit, personal violence, on the said Michael Barker.*” Thus, the statement of facts in that case was brief in relation to the person’s conduct. Notwithstanding that, the Supreme Court held in that case that correspondence was established. Henchy J. set out the legal principles for the conduct for the correspondence inquiry. Henchy J. emphasised that the correspondence inquiry must focus on the “*factual components*” in the warrant to decide whether a corresponding offence in this jurisdiction is established. Henchy J. addressed the words used in a warrant as follows; -

“When it comes to the words in the warrant by which the factual content of the specified offence is identified, the correct rule is that those words should prima facie be given their ordinary or popular meaning unless they are used in a context which suggests that they have a special signification. The reason for that rule is that, when statutes or other public or formal documents directed to the public at large, or to any member of the public at large, are being interpreted, it is to be assumed, in the absence of a counter-indication, that the words used in such document have been used in their popular rather than in any specialised or technical sense.”

In *Minister for Justice v. Dolny* [2009] IESC 48, the Supreme Court emphasised that when considering correspondence, the question should be asked in general terms as to whether the conduct set out in the warrant is contrary to the criminal law of the State. Denham J., as she then was, outlined at para. 38 therein; -

“[38] In addressing the issue of correspondence it is necessary to consider the particulars on the warrant, the acts, to decide if they would constitute an offence in the State. In considering the issue it is appropriate to read the warrant as a whole. In so reading the particulars it is a question of determining whether there is a corresponding offence. It is a

question of determining if the acts alleged were such that if committed in this jurisdiction they would constitute an offence. It is not a helpful analogy to consider whether the words would equate with the terms of an indictment in this jurisdiction. Rather it is a matter of considering the acts described and deciding whether they would constitute an offence if committed in this jurisdiction.”

18. Therefore, it is clear that this Court must look at the factual components of the offences specified in the warrant, regardless of the name given to them, and evaluate whether those factual components in their entirety, or near entirety, would constitute an offence if committed in this State. This Court therefore finds on the facts of the case, and in plain terms, that the respondent stole the Teleporter i.e. committed the act of theft contrary to Section 4 of the Criminal Justice Theft and Fraud Offences Act 2001. There were many elements involved in this offence, starting with the movement of the JCB from Ballycastle, County Antrim to County Down and ending with its sale in County Down. The presentation of the cheque in this jurisdiction is a part of the factual matrix, as is that fact that the cheque was not honoured in a bank in the issuing state. The essential ingredient for the crime of theft is that the *actus reus* of the crime is the dishonest appropriation of property without the consent of its owner. The necessary *mens rea* for the crime of theft is the intention to deprive. Thus, this Court does not focus on the technical name afforded to the offence in the TCA warrant, but rather considers all of the information and the totality of the circumstances. This Court finds correspondence between the first offence in the warrant and the candidate offences of theft, contrary to Section 4 of the Criminal Justice Theft and Fraud Offences Act, 2001. Insofar as the respondent induced the owners of the Teleporter to give him the Teleporter, and in circumstances where the respondent allegedly took same with an intention to make a gain for himself out of the transaction, this Court can also find correspondence between the first offence in the warrant

and the candidate offence of Section 6 of the Criminal Justice Theft and Fraud Offences Act 2001.

19. For the second offence of converting criminal property, the essential ingredient is the conversion of the JCB Teleporter, to criminal property, in circumstances where the respondent knew that it had been stolen. This conversion was allegedly carried out by the respondent by sale of the JCB Teleporter in County Down. Therefore this Court can find correspondence between the second offence in the warrant and the candidate offence in this jurisdiction of Converting Property, contrary to the Money Laundering and Terrorist Financing Act 2010.

20. I am satisfied that surrender is not prohibited by Section 38 of the Act and this point of objection is dismissed.

21. **Is surrender prohibited by Section 44 of the Act of 2003?**

Section 44 of the 2003 Act states; -

“44. A person shall not be surrendered under this Act if the offence specified in the relevant arrest warrant issued in respect of him or her was committed or is alleged to have been committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State.”

In determining the issue of extraterritoriality, the following cases are of assistance to this Court:

In *Minister for Justice and Equality v. Egharevba* [2015] IESC 55, at para. 15 of her judgment, Denham C.J. stated; -

“[15] The requirements set out in s. 44 of the Act of 2003, as amended, are conjunctive. Thus, both conditions are required to be met for the appellant to succeed.”

In *Minister for Justice and Equality v. Vasile-Alin Jelecutean* [2021] IEHC 375, Mr. Justice Burns stated at para. 19; -

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

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

It is noteworthy that the wording of s. 44 of the Act of 2003 refers to “was committed or is alleged to have been committed”. This envisages two separate concepts, namely that of “was committed” and that of “is alleged to have been committed”. The reference to “was committed” reflects the fact that a European arrest warrant may be issued in respect of a person who has already been convicted for the offence in question and, therefore, the relevant facts relating to the commission of the offence have been judicially determined, including the location thereof. The reference to “is alleged to have been committed” reflects the fact that surrender may be sought in order for the person to be tried in respect of an alleged offence where it has not yet been judicially determined whether the offence was actually committed including the location thereof and, thus, the relevant criteria is where the offence is “alleged to have been committed”.

Further, Mr. Justice Burns outlined at paras. 20-22; -

“[20] Counsel on behalf of the respondent submitted that part E of the EAW, which sets out a description of the circumstances in which the offences were alleged to have been committed, indicates that the vehicles had originally been obtained from third parties in Hungary, Romania or Italy by fraud, theft or misappropriation and then transported to Germany. He submitted that in such circumstances, part of the offences were committed in a place other than the issuing state and, thus, the offences specified in the EAW are alleged to have been committed in a place other than the issuing state.

[21] It is clear from the description of the offences set out at part E of the EAW that what is alleged against the respondent is that he was part of a criminal gang, the purpose of which was to unlawfully traffic in stolen vehicles. As is set out in the EAW, all members of the gang knew that the vehicles in question had been obtained from third parties in Hungary, Romania or Italy by fraud, theft or misappropriation and had then been transported to Germany where, for the purpose of resale, the gang applied for vehicle registration documents by submitting fictitious contracts and forged Romanian identity cards. The vehicles were then sold to people interested in buying them in Germany from whom the illegal origin of the vehicles was concealed. The respondent and other members of the gang used forged identification cards to mislead as to their identity and used false personal data to deceive the purchasers.

[22] I am satisfied that it is alleged that the respondent was part of a criminal conspiracy to unlawfully obtain vehicles outside of Germany but to then bring them into Germany where, by further unlawful means, the vehicles were then sold on. It is clear that the offences referred to in the EAW are alleged to have been committed partly in Germany and partly in other locations. In particular, the completion of the criminal activity took place in Germany with the sale of the vehicles. The offences set out in the

EAW are described in terms of the final sale in Germany. I am satisfied that it is alleged in the EAW that the offences were committed in Germany. Furthermore, the sales were part of a conspiracy. Conspiracy may transcend national borders. Acts taken in furtherance of the conspiracy may occur in a number of different locations but, notwithstanding such matters, each conspirator will be taken to have carried out such act wherever it was carried out by one of the other conspirators. It is clear from the facts as alleged in part E of the EAW that it is alleged that significant acts and, in particular, the sale of the vehicles took place in Germany. In such circumstances, I am satisfied that it is alleged that the offences to which the EAW relates were committed in the issuing state. This is consistent with the reasoning of the Irish Courts in Minister for Justice and Equality v. D.F. [2016] IEHC 82; Minister for Justice and Equality v. S.F. [2016] IEHC 81 and Minister for Justice and Equality v. Egharevba [2015] IESC 55.”

Finally, this Court has considered the helpful judgment in *Minister for Justice and Equality v. Ronan Hughes* [2020] IEHC 299 in which Burns J. states at para. 29;

“[29] Section 44 of the Act of 2003 sets out a two-part test for determining whether surrender is prohibited by virtue of that section. Firstly, it must be established that the offence specified in the European arrest warrant was committed or is alleged to have been committed in a place other than the issuing state. Secondly, it must be established that the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State.....

[31] The executing judicial authority is not normally required to conduct its own fact-finding inquiry to determine where the alleged offence took place but rather is to take cognisance of where the offence is alleged to have taken place on the basis of the

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

[32] The respondent relies upon the multiplicity of locations referred to in the narrative of events contained within the warrant, but reference to a number of different locations and/or to events which took place in a number of different states does not in and of itself mean that an offence is alleged to have been committed in a place outside the issuing state or even raise an ambiguity in respect thereof. It is a long-standing principle of criminal law that a person may commit an offence in one jurisdiction while being physically present in another jurisdiction. In respect of result crimes, i.e. crimes which are not completed until some event has resulted, traditionally courts look to the place where the result occurred in order to determine where the offence was committed. That is not to say that the courts of the state where the offence was committed will have exclusive jurisdiction in respect of the prosecution of same, a number of states may take upon themselves jurisdiction to prosecute such a matter depending upon the existence of particular facts, for example the nationality of the victim or alleged wrongdoer. The question of jurisdiction is a separate matter from the place where the offence is alleged to have been committed. For example, a French national may be deliberately poisoned by another French national in France shortly before the victim leaves France to visit the UK, but his

death does not occur until he is in London. The poisoner does not leave France. The offence certainly occurred in the UK and the UK has jurisdiction to prosecute it. But as most of the relevant witnesses and items of real evidence are in France and if the French authorities wish to prosecute the poisoner in France, it may be that the UK would agree not to prosecute and leave it to France to do so. That does not mean that the offence did not occur in the UK. The certification of expediency by the UK Home Secretary required by s. 2 of the Territorial Waters Jurisdiction Act, 1878 is not indicative of the alleged crime having been committed outside the UK or that an extra-territorial jurisdiction is being invoked, but rather reflects the fact that in some instances there may be overlapping jurisdictions and particular aspects might render it not expedient for the matter to be prosecuted in the UK. For example, where the offence occurred on a vessel as it passed through UK territorial waters without stopping and the relevant investigation was conducted by another state with overlapping jurisdiction such as the flag state of the vessel.

[33] The first part of the test set out in s. 44 of the Act of 2003 does not refer to whether or not the issuing state has or claims jurisdiction to prosecute the matter but rather requires the executing judicial authority to be satisfied as to where the offence was committed or is alleged to have been committed. It is only where the executing Irish judicial authority is satisfied that the offence was or is alleged to have been committed outside the issuing state that it then needs to turn to the second limb of the test in s. 44 in order to ascertain whether the act or omission of which the offence consists would not constitute an offence under Irish law by virtue of having been committed in a place other than Ireland.

[34] Neither the Act of 2003 nor the Framework Decision expressly define the territorial limits of the respective states for the purposes of s. 44 or article 4. I am

satisfied that applying the ordinary meaning of the words “in a place other than the issuing state” means in a place outside the territorial limits of the issuing state. I am satisfied that the territorial limits of a state include its territorial waters. Thus I am satisfied that on a reading of the totality of the warrant in this case that it is alleged therein that the offences of manslaughter and conspiracy were committed in the territory of the issuing state, i.e. the UK. Moreover, I am satisfied that on the facts as set out in the warrant, the said offences, if committed, did indeed occur in the issuing state.”

22. In relation to these offences, the issuing judicial authority has indicated either in the TCA warrant, or by way of additional information, as follows:

- That this offence occurred in Northern Ireland.
- That on 17th of May 2016, WC Agriplant were the owners of a JCB 526 Teleporter worth £11, 283.22.
- That the respondent agreed to collect the Teleporter from Ballycastle, Antrim and was to deliver same to WC Agriplant’s premises in Portarlington. He did not do so.
- That at the time of the offence the respondent was resident at 33 Oakwood Avenue, Bangor, County Down, Northern Ireland.
- That the respondent’s business, Keane Co. Contractors Ltd, was registered to the same address.
- That the respondent sent multiple holding emails to WC Agriplant, promising that the property would be delivered.
- That the respondent spoke to the owner of AG Agriplant and stated that the property had been impounded but that he would buy the property in light of same.
- That the respondent attended Agriplant’s premises and handed over a £3,000.00 cheque claiming that it was a deposit for the property.

- That this cheque was lodged but was not honoured. The cheque was to be drawn on his sterling business account, held with Santander, Newtownards, County Down, Northern Ireland.
- That further emails were sent from the respondent indicating payment would be furnished. It never was.
- That a letter was sent to AC Agriplant from a firm of solicitors, based in County Down on behalf of the respondent. It indicated that the JCB had been involved in an accident, that the respondent was awaiting payment from his insurer and that payment in full would be made to WC Agriplant. Payment was never made.
- That during interview, the respondent stated the JCB Teleporter had been involved in an accident that the insurance company refused to provide cover for. Police inquiries proved that the insurance company never received any claim in relation to the Teleporter.
- That the respondent also stated in interview that he sold the JCB and received £3,200.00, and that the handover of the property took place at 501 Belfast Road, Bangor, County Down. He said that he sold it for cash.
- That despite being asked for same, he did not identify the person he sold it to and has no documentation confirming proof of sale.

23. In relation to both offences, this Court is told by the issuing judicial authority that the acts that are relevant to these offences, occurred in the Northern Ireland.

24. In relation to offence one, in this Court's view, there is no obvious ambiguity or a manifest error as to the stated alleged location of the offence. Akin to the Hughes case, as cited above, the respondent relies upon the mention of other locations referred to in the narrative of events contained within the warrant, in support of his objection. However, reference to another location does not in and of itself mean that an offence can be alleged to have been committed

in a place outside the issuing state, or even raise an ambiguity in respect thereof. This Court must have regard to the information provided by the issuing state and the principle of mutual trust and cooperation in determining these issues. This Court has been told both by way of the TCA warrant, and by the additional information provided, that these offences occurred in the issuing state. This Court has been told by the issuing judicial authority why this is so. In this respect, there is ample evidence to support the issuing judicial authority's assertion that the *mens rea* and *actus reus* of offence one occurred in the issuing state. Similarly, in relation to offence two, the allegation is that the respondent collected the Teleporter and transported it to 501 Belfast Road, Bangor, County Down. Then the respondent claimed to have sold it to a man from Armagh. This sale allegedly took place at 501 Belfast Road, Bangor, County Down. Plainly speaking, the sale, i.e. the conversion, took place in County Down.

25. The Court has received significant additional information from the issuing judicial authority. This Court has also received a summary of the respondent's interview from the Crown Solicitors Office. The respondent submits that the assertion that these events occurred in Northern Ireland is based on the respondent's own interview. He submits that this Court should not rely upon such information or that such information is insufficient for this Court's purposes. He submits that such information is a "*duirt bean liom to duirt bean lea*" type situation. In this Court's view, the information in relation to these offences is not simply sourced from the respondent's interview. In any case, this Court has no reason to doubt the *bona fides* of the information or the source of same, and no reason based on evidence has been furnished to this Court that would seek to undermine such assertions.

26. On the 12th May 2022, the respondent sought an adjournment to take instructions in relation to the additional information of the 10th May 2022 for the purposes of potentially filing an Affidavit. This Court has refused that application and did so in the following circumstances:

- (i) The TCA warrant was received by the respondent on the 30th of July 2021, and his

interviews are referred to therein. In fact, a comprehensive summary of his interviews is included in the TCA warrant. On the 21st of January 2022, the issuing judicial authority indicated that the respondent was interviewed under caution on the 26th of June 2017. The issuing judicial authority further stated that during interview the respondent claimed to have sold the Teleporter to an unidentified male from Armagh as scrap and that it was collected from his yard in County Down, Northern Ireland. Thus, the information in relation to these offences was in the possession of the respondent for a considerable period of time.

(ii) This Court must deal with these applications expeditiously. Article 17 of Council Framework Decision 2002/584/JHA states:

- “1. A European arrest warrant shall be dealt with and executed as a matter of urgency.*
- 2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.*
- 3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.*
- 4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.*
- 5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.*
- 6. Reasons must be given for any refusal to execute a European arrest warrant.*
- 7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay.*

In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.”

(iii) This Court must only grant adjournments where necessary and where a purpose would be served in so doing. The respondent had close to a year to engage with the contents of the TCA warrant by way of Affidavit and elected not to. In any case, an adjournment would likely serve no purpose as any assertions seeking to contradict the information given by the issuing judicial authority, relative to the potential evidence in the case, would involve a substantive factual issue to be determined by a court of trial in the issuing state and not this Court.

27. The respondent submits that this Court needs to be told by the issuing judicial authority where the offences occurred and not by the Crown Prosecution Service. In that regard, this Court notes that it received a clear and unambiguous answer confirming that the offences occurred in Northern Ireland in the response from the issuing judicial authority dated the 21st of January 2022. This assertion is clearly supported by the information available on the arrest warrant and by the additional information received.

28. I am satisfied that surrender of the respondent is not prohibited by Section 44 of the Act of 2003 and this ground of objection is dismissed.

29. **Is surrender prohibited by Section 11 of the Act of 2003?**

Section 11 of the 2003 Act states:

“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 ...

*(1A) Subject to subsection (2A), a relevant arrest warrant shall specify —
[...]*

(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 ...

(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.”

30. In relation to the issue of clarity, this Court is assisted by the judgment of Donnelly J. in *Minister for Justice and Equality v. AW* [2019] IEHC 251, wherein she 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.”

31. The requirement for clarity therefore serves two purposes:

1. It allows the Court to carry out its functions under the act by endorsing the EAW and establishing correspondence, and it permits the respondent to challenge his surrender on grounds such as the rule of speciality, *ne bis in idem* and extraterritoriality.
2. The respondent also has the right to know the reason for his arrest.

32. In this Court’s view, the totality of the information set out in the warrant, and the additional documentation amounts to sufficient information as to the circumstances under which the offences were committed, including the date and time of the offence and the degree of involvement of the respondent. The details that have been furnished have enabled this Court to deal with the issue of endorsement of the warrant and to deal with

the issue of correspondence & extraterritoriality. The details given are sufficient to let the respondent know the nature of the charges against him. Should an issue of specialty arise, the details are sufficient. The details are sufficient should any issue of *ne bis in idem* arise (no allegation that such an issue already arises has been given). The respondent also knows the reason for his arrest.

33. The respondent no longer suggests, as part of this objection, that a decision has not been made to prosecute the respondent in Northern Ireland.

34. I am satisfied that surrender is not prohibited by Section 11 of the Act of 2003. This point of objection is dismissed.

35. I am satisfied that surrender of the respondent is not prohibited by reason of Part 3 of the Act of 2003 or another provision of that Act.

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