Neutral Citation Number: [2020] EWHC 1527 (Admin)

Case No: CO/1024/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/06/2020

Before:

LORD JUSTICE HOLROYDE
MR JUSTICE WILLIAM DAVIS

- -

Between:

GOVERNMENT OF THE UNITED STATES OF AMERICA	**Appellant**
- and -	
ROBERT WALKER McDAID	**Respondent**

- -
- -

Helen Malcolm QC and Joel Smith (instructed by **Crown Prosecution Service Extradition Unit**) for the **Appellant**
Edward Fitzgerald QC and David Williams (instructed by **Alsters Kelley Solicitors**) for the **Respondent**

Hearing dates: 30th April, 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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LORD JUSTICE HOLROYDE

Lord Justice Holroyde and Mr Justice Willaim Davis :

1. The appellant, the Government of the United States of America, requested the extradition of the respondent Mr McDaid to face charges alleging that he had participated in a scheme to convey false and misleading information to law enforcement agencies in the USA, thus causing armed response officers to attend an address at which a hostage was said to be held. On 28th February 2019, in the Westminster Magistrates' Court, District Judge Tempia ("the judge") discharged the respondent. By leave of Holman J, the appellant now appeals against the judge's order. This is the judgment of the court.

2. We record at the outset our gratitude to counsel and solicitors on both sides, and in particular to Ms Malcolm QC and Mr Fitzgerald QC for their oral submissions.

The facts:

3. The relevant facts can for present purposes be summarised. For convenience, and intending no disrespect, we shall for the most part refer to those involved by their surnames only. Also for convenience, we shall refer to the United Kingdom and the United States of America as the UK and the USA respectively.

4. Two citizens of the USA, Tyrone Dobbs and Evan Passarelli, were in dispute over a drug debt. In February 2015, Passarelli was assaulted by an associate of Dobbs. As revenge for that assault, Passarelli's friend Zachary Lee organised the "swatting" of Dobbs. "Swatting" is a term used to describe the making of false report of a critical incident which deceives a law enforcement agency into sending an emergency response team to the supposed scene.

5. It is alleged that Lee (in the USA) contacted the respondent (in England) by Skype. The record of their conversation, legally obtained by the authorities in the USA, shows that Lee explained that he wanted Dobbs swatted. The man alleged to be the respondent said that would be easy to do, and agreed to do it. Lee provided details of Dobbs' address and description. He emphasised that there must be nothing to connect him to the swatting.

6. It is alleged that on 18th February 2015 Lee, the respondent and another British man took part in a further Skype call, in the course of which a man with an English accent called a Terrorism Hotline in Maryland. The caller, using the name Tyrone and giving Dobbs' address, said that he was armed with a loaded gun and plastic explosives, had taken three hostages, and would begin executing the hostages if a ransom of $15,000 was not paid within 15 minutes. It is alleged that the respondent was either the man who made that call, or alternatively had recruited the other British man to do so.

7. Armed police officers were sent to Dobbs' address. They surrounded Dobbs' home and evacuated neighbouring properties. Dobbs was contacted by phone and ordered to leave his home. He did so, but then went back inside. When he emerged for a second time, he was shot in the face and chest with rubber bullets. He sustained serious injuries.

8. On 11 January 2017 a grand jury sitting in the District of Maryland returned an indictment charging the respondent with three offences contrary to provisions of the US Code: conspiracy against the United States; false information and hoax, and aiding and abetting; and aggravated identity theft and aiding and abetting. The maximum sentences for the first of those offences is 5 years' imprisonment. For the second, the maximum sentence is 20 years' imprisonment. For the third, the penalty is a term of 2 years' imprisonment which runs consecutively to any other sentence.

9. On the same day, a warrant for the respondent's arrest was issued by the US District Court of the District of Maryland. The appellant then requested the extradition of the respondent. Pursuant to section 70 of the Extradition Act 2003 ("the Act"), the request was certified as valid by the Secretary of State on 16 June 2017. On 7 September 2017 the respondent was arrested under section 71 of the Act and produced before the magistrates' court. He was initially remanded in custody, but subsequently released on conditional bail.

10. The respondent denies any knowledge of or involvement in the relevant events, and denies knowledge of or contact with Lee.

11. Part 2 of the Act applies to this request. The respondent resisted extradition on a number of grounds. The judge discharged him on one of those grounds, namely that extradition would not be in the interests of justice by reason of forum: the "forum bar" under section 83A of the Act. She rejected the other grounds put forward by the respondent, and we need say no more about them.

The legal framework:

12. Before coming to the reasons which the judge gave for her decision, and the grounds of appeal against it, it is convenient to set out the statutory terms of the forum bar and to refer to relevant case law.

13. Section 83A of the Act provides:

> "**83A Forum**
>
> (1) The extradition of a person ("D") to a category 2 territory is barred by reason of forum if the extradition would not be in the interests of justice.
>
> (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge –
>
> (a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and
>
> (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
>
> (3) These are the specified matters relating to the interests of justice—

(a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;

(b) the interests of any victims of the extradition offence;

(c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;

(d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;

(e) any delay that might result from proceeding in one jurisdiction rather than another;

(f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to

(i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and

(ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;

(g) D's connections with the United Kingdom.

(4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 2 territory concerned.

(5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.

(6) In this section "D's relevant activity" means activity which is material to the commission of the extradition offence and is alleged to have been performed by D."

14. It is to be noted that subsection (3) contains an exhaustive list of the only matters which are specified as relating to the interests of justice.

15. Where a requesting authority appeals pursuant to section 105 of the Act against an order for discharge at an extradition hearing, the powers of this court are set out in section 106, which - so far as is material for present purposes - provides:

> "**106 Court's powers on appeal under section 105**
>
> (1) On an appeal under section 105 the High Court may -
>
> (a) allow the appeal;
>
> (b) direct the judge to decide the relevant question again;
>
> (c) dismiss the appeal.
>
> (2) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.
>
> (3) The court may allow the appeal only if the conditions in subsection (4) or the conditions in subsection (5) are satisfied.
>
> (4) The conditions are that –
>
> (a) the judge ought to have decided the relevant question differently;
>
> (b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.
>
> …
>
> (6) If the court allows the appeal it must –
>
> (a) quash the order discharging the person;
>
> (b) remit the case to the judge;
>
> (c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing."

16. In *Love v Government of USA* [2018] 1 WLR 2889, [2018] EWHC 172 (Admin), in which the magistrates' court had found that the forum bar was not made out, the High Court (the Lord Chief Justice and Ouseley J) allowed an appeal against the order sending the case to the Secretary of State for her decision as to whether the defendant should be extradited. At [22] the court said this about section 83A:

> "Its underlying aim is to prevent extradition where the offences can be fairly and effectively tried here, and it is not in the interests of justice that the requested person should be extradited. But close attention has to be paid to the wording of the statute rather than to short summaries of its purpose or to

> general parliamentary statements. The forum bar only arises if extradition would not be in the interests of justice: section 83A(1). The matters relevant to an evaluation of "the interests of justice" for these purposes are found in section 83A(2)(b). They do not leave to the court the task of some vague or broader evaluation of what is just. Nor is the bar a general provision requiring the court to form a view directly on which is the more suitable forum, let alone having regard to sentencing policy or the potential for prisoner transfer, save to the extent that one of the listed factors might in any particular case require consideration of it."

17. The court went on to consider, at [24-26], the test to be applied on appeal. Although specifically referring to an appeal pursuant to section 103 of the Act where a case is sent to the Secretary of State, the principles are equally applicable to an appeal pursuant to section 105 in a case, such as this, in which a requested person is discharged at an extradition hearing. The appeal is not a re-hearing of evidence or repeat of submissions as to how factors should be weighed. The appellate court normally has to respect the findings of fact made by the District Judge, especially if he or she has heard oral evidence. The sole question for the appellate court is whether the judge made the wrong decision:

> "The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed."

18. The court when considering the specified matters said in relation to factor (g) that the concept of connections with the UK went beyond the fact of citizenship or right of residence. Without attempting an exhaustive definition of "connection", the court said at [40] that

> "It would cover family ties, their nature and strength, employment and studies, property, duration and status of residence, and nationality. It would not usually cover health conditions or medical treatment, unless there was something particular about the nature of the medical condition or the treatment it required, that connected the individual to treatment in the United Kingdom."

The court went on, at [41], to say:

> "The risk of suicide upon extradition, or serious deterioration in health, would not of itself create a connection to the United Kingdom. But they would be relevant if they were the consequences of breaking a separate connection, because that would evidence its nature and strength."

19. The principles stated in *Love* at [22] and [23-26] were confirmed and followed by the High Court (the Lord Chief Justice and Males J) in *Scott v Government of the United*

States of America [2019] 1 WLR 774, [2018] EWHC 2021 (Admin). In that case also, an appeal was allowed in circumstances in which the District Judge had found that the forum bar was not made out. At [25], the court said:

> "Each of the specified matters must be taken into account in the sense of being borne in mind, but the extent (if at all) to which they are relevant and the weight to be accorded to them will vary from case to case. There is no predetermined hierarchy whereby one or more factors will have greater significance than others."

20. We turn to consider the judge's decision in the circumstances of this case.

The judge's decision:

21. The judge heard evidence from the respondent and his mother. The respondent's evidence included reference to treatment which he had been receiving for depression in October 2017 and to the sad fact that his father had died in early January 2018, a loss which the respondent found very difficult. A US attorney, Mr Proctor, gave factual evidence about the regime and conditions at Chesapeake detention facility, where the respondent would probably be held if extradited. In that regard, the respondent provided the judge with material relating to prison conditions, including a 2018 Quality Assurance Review relating to safety and health care in the Chesapeake facility.

22. The evidence considered by the judge also included reports from two consultant psychiatrists, to the effect that the respondent suffers from a mild degree of Autistic Spectrum Disorder and has a history of depression, including suicidal ideation. The opinion of one of these expert witnesses, Dr Ragunthan, was that extradition would have a negative effect on the respondent: his suicidal thoughts were likely to increase and he would not have the support of his family. The opinion of the other, Dr Raviraj, was that the respondent, as at March 2018, was currently suffering from a moderate to severe depressive episode, without psychotic symptoms. The depression was complicated by bereavement, and had worsened since the commencement of the extradition proceedings. If the respondent were extradited and removed from the support of his family, his depression would worsen and previous suicidal thoughts and self-harm could re-emerge if he became severely depressed. To set against that, the judge had a report about the health care provisions available at the Chesapeake detention facility, which indicated that the respondent would undergo a mental health screening and screening for suicidal ideation upon arrival and could be transferred if he needed a level of care which was not available at that facility.

23. It was common ground between the parties that the judge was entitled to find that the threshold condition in section 83A(2)(a) was satisfied. The judge considered each of the matters specified in subsection (3) in turn, and made the following findings.

24. As to (a), it was clear that the harm resulting from the extradition offences occurred in the USA, which will usually be "a very weighty factor" in favour of extradition: see *Love* at [28].

25. As to (b), Dobbs was clearly a victim of the extradition offences. The judge considered a submission that it was in the interests of the victim that a trial should take place in England rather than taking a significant risk that there would be no trial in the USA because the respondent might commit suicide. She concluded from the evidence as a whole that the risk of suicide was not such as to give rise to a significant risk that there would be no trial at all in the USA, and that (b) was a factor in favour of extradition.

26. The judge found that (c) was also a factor in favour of extradition. The appellant had enquired whether the UK authorities would prosecute the respondent, but no investigation had been commenced in this country. In a "Prosecutor's statement of belief pursuant to section 83A Extradition Act 2003", a Deputy Chief Crown Prosecutor Mr Malcolm McHaffie had expressed the view that the more appropriate forum was the USA, in particular because "the gravamen of the case was in the USA" and the charges available to US prosecutors were "more obviously reflective of the conduct".

27. As to (d), the judge found that evidence necessary to prove the offence was or could be made available in the UK, and that this factor weighed against extradition. She reached that conclusion because of the appellant's enquiry as to whether there would be a prosecution in this country; because evidence from the complainant would not be relevant to any issue at trial; and because evidence of the respondent's involvement would come from his alleged use of electronic means of communication. She noted that counsel for the appellant had acknowledged that the evidence necessary to prove the offences could be made available in the UK, albeit at considerable expense and inconvenience.

28. As to (e), the appellant had asserted that a trial in the USA could be concluded within 70 days of extradition. Mr Proctor however had given evidence that in his experience as a criminal lawyer, that timescale would be delayed if any motions were raised, and the case could take years to come to court. The appellant had submitted that trial in this country would inevitably involve some delay, whereas the respondent had submitted that any delay would be minimal in view of the nature of the evidence which would be adduced. The judge's view was that a prosecution in this country would be unlikely to result in delay, given the nature of the offending. She concluded that this factor weighed against extradition.

29. As to (f), the judge noted that Lee had already been convicted and sentenced in the USA and there was accordingly no question of joint trial with him. She repeated her view that the evidence to be adduced against the respondent would be of a technical nature, and could if necessary be given over a video link. She rejected the appellant's submission that this was a neutral factor and concluded that it was a factor against extradition.

30. As to (g), the judge quoted what had been said in *Love* at [40-41]. She observed that there was some similarity between the respondent's personal circumstances and those of Mr Love. She noted that the respondent, then aged 23, is a vulnerable young man with ASD. He has a very close and strong relationship with his mother, which the judge had witnessed during the hearing, and an extremely close relationship with his sisters and stepfather. The judge continued:

> "The medical evidence I have read is very clear about the strength and support of his relationship with his family and how this will impact on his depression and suicide ideation if he were extradited to the USA where he would not have this strong support. In particular, I note Dr Ragunathan's opinion that given his diagnosis of depression and autism Mr Walker-McDaid heavily relies on his current social structure and support …and in his opinion that, if extradited, he would not have the similar social structure and social support he is having being supported by his mother, stepfather and his two sisters. In his opinion "this social structure and support network is vital for [the respondent's] mental health well-being and his day-to-day functioning" … . Similarly, Dr Raviraj's assessment states that [the respondent's] family support has been key "in my view, which prevents maladaptive self-harming behaviour emerging during stress of these proceedings" … As stated in *Love* (para 43) I am looking at the nature of [the respondent's] connection to the UK and there is a particular strength in the connection to his family and home circumstances which involves the stability and care his family and in particular his mother provides to him. This is a factor against extradition."

31. The judge summarised her findings "in undertaking the balancing exercise in respect of the factors for and against forum in respect of forum". She said that the strength of the respondent's connections to the UK was in her view a weighty factor. She concluded:

> "These factors result in extradition being barred by reason of forum as not being in the interests of justice".

The grounds of appeal:

32. The grounds of appeal are that the judge erred in her approach to section 83A of the Act and in particular in her consideration of section 83A(3)(d), (e) and (f); that she erred in law in her construction of section 83A(3)(f); and that her overall evaluation of the forum issue was wrong and she erred in discharging the respondent. The appellant invites this court to quash the order for discharge and to remit the case to the judge, ordering her to proceed as she would have been required to do if she had decided the issue of forum differently.

The submissions on behalf of the appellant:

33. Ms Malcolm submits that the judge adopted an incorrect approach: instead of considering whether extradition would not be in the interests of justice, her summary (to which we have referred at [31] above) shows that she simply made a choice as to which course seemed preferable.

34. Ms Malcolm focuses on the judge's approach to the factors in paragraphs (d)-(f) of section 83A(3). As to (d), she submits that the judge failed to consider not only whether the evidence was available but also whether it was available to prove an equivalent offence. She submits that a charge of doing acts tending and intended to

pervert the course of justice would raise an issue as to jurisdiction (because the relevant course of justice was in the USA, not in the UK) and that the possible alternatives were limited to comparatively minor offences. The judge did not identify what offence(s) could be charged in this country, and therefore failed to consider whether such charges would "correspond to the extradition offences". Further, the judge was wrong to think that the evidence in question was only "technical": it would be necessary to investigate the evidence in the USA of the respondent having had prior contact with and knowledge of Lee. Reliance would have to be placed on the provisions relating to mutual legal assistance, and there may be issues as to the admissibility of evidence (for example, relating to interception of communications) and as to disclosure of material which might be confidential. Ms Malcolm accepts that, with cooperation, these obstacles could be overcome and the necessary evidence made available in this country, but submits that the judge understated the complexity of the issues and failed to consider what offence(s) could be charged.

35. As to (e), the appellant relies on a provision of the US Code which would require a trial to commence within 70 days of the respondent's first appearance before a court in the USA. Ms Malcolm accepts that, as Mr Proctor said in evidence, the filing of any motion by the defence would stop that clock; but, she says, the respondent cannot rely on delay of that sort as an argument against extradition. She adds that, as Lee has already been convicted, it can be inferred that the US authorities would be ready to prosecute the respondent without the delay which would inevitably arise if the UK authorities had to initiate an investigation and prosecution. Moreover, Mr Proctor's best estimate was that the average time between first appearance and trial was about five to seven months, which is less than the time it would take in this country, even without taking into account the delay which would be likely to arise as a result of the need for a prosecution in this country to rely on mutual legal assistance.

36. As to (f), the judge wrongly treated this factor as irrelevant on the basis that Lee has already been convicted. Ms Malcolm points out that subsection (3)(f) refers to "all prosecutions" in the plural. She submits that there is an obvious public interest in all the trials relating to a particular offence taking place in one jurisdiction, and that the court should be able to apply the same criteria in sentencing. She also questions whether Dobbs, who has a legitimate interest in being able to participate in any trial, would in practice be able to have full video link access to proceedings in this country.

37. In summary, the judge identified four factors which weighed against extradition but erred in her approach to three of them. As a result, her decision was wrong: on a proper application of section 83A(3), no forum bar to extradition arises.

The submissions on behalf of the respondent:

38. Mr Fitzgerald submits that the judge, who cited the decision in *Love*, applied the correct test. The fact that in summarising her findings she listed the factors for and against extradition is not an indication that she did not follow the correct test. *Love*, *Scott* and also *Shaw v America* [2014] EWHC 4654 (Admin) show that the weight to be accorded to particular factors may vary from case to case, and one factor can outweigh others. Standing back, he submits, the judge's overall decision cannot be said to be wrong.

39. As to (d), Mr Fitzgerald submits that the judge was correct to find that the necessary evidence could be made available in this country. He says that the points now made by the appellant about possible problems of jurisdiction were not raised before the judge: the argument below was focused upon the expense and inconvenience of obtaining the evidence for a trial in this country. The evidence before the judge was that Mr McHaffie had felt it possible that there could be a prosecution in this country for conspiracy to pervert the course of justice in the USA, relying on section 1A of the Criminal Law Act 1977. Mr McHaffie had also identified a charge which could be brought under section 1 of the Malicious Communications Act 1988, albeit that he did not regard that section as "an ideal fit to the facts" and regarded the maximum penalty of 2 years' imprisonment as inadequate for the offending in this case.

40. As to (e), the judge correctly referred to Mr Proctor's evidence that if problems arose because of a need for a medical evaluation of the respondent, or an issue as to his competency, the trial process in the USA could take several years.

41. As to (f), Mr Fitzgerald notes that in January 2018 Lee – the instigator of the offence - was sentenced in the US to two years' imprisonment. He invites our attention to emails showing that in February 2018 the appellant asked whether the UK authorities would be interested in prosecuting the respondent for the same conduct, and that in April 2020 the appellant again indicated that if the CPS was willing, the charges in the USA might be dismissed "in deference to a British prosecution". It is submitted that the appellant clearly thought, notwithstanding the proceedings against Lee in the USA, that it would be appropriate for the respondent to be tried here, if such a prosecution were feasible.

42. Mr Fitzgerald commends the judge's approach to (g), and her assessment that it is a weighty factor against extradition. He points to the unchallenged medical evidence as to the respondent's history of depression and suicidal ideation (pre-dating the alleged offending), as to his dependence on the support structure which is provided by his family, and as to the risk of deterioration in his condition if he is deprived of that support.

Discussion and conclusions:

43. As is clear from its language, and from the principles stated in *Love* at [22], section 83A does not require a court to decide in a general way, as between the UK and the state requesting extradition, which of the two is the more suitable, or preferable, forum. Assuming that a substantial measure of the requested person's relevant activity was performed in the UK (as was undoubtedly the case here), it requires an evaluation of the specified matters in order to decide whether extradition would not be in the interests of justice and should not take place. That evaluation is necessarily fact-specific, because the importance of each of the matters specified in subsection (3), and the weight to be given to each of them, will vary according to the circumstances of the case.

44. We consider first the appellant's submission that the judge failed to apply the correct test. We accept that in this context, the phrase "balancing exercise" does not accurately or sufficiently describe the necessary evaluative process. We are not however persuaded that the judge in fact applied the wrong test. She was referred to, and considered, relevant case law including *Love* and *Scott*. The terms in which she

addressed the specified matters indicate her making of the necessary evaluation: by way of examples, she referred to the statement in *Love* that (a) will usually be a very weighty factor in favour of extradition; she explained why she found (f) to be a factor weighing against extradition, and not merely neutral; and she set out in some detail, and with specific references to *Love*, her reasons for finding (g) to be a weighty factor against extradition in this case. At the conclusion of this part of her judgment, she encapsulated her decision as to forum in the terms we have quoted at the end of [31] above, which plainly reflect the test required by section 83A. Where the forum bar is raised in opposition to an extradition request, the court will generally work through each of the specified matters in turn, as the judge did here. In our view, her use of the phrase "balancing exercise" was an imprecise reference to that process rather than an indication that she was applying an incorrect test. We therefore reject the contention, in the first ground of appeal, that the judge erred in her approach to section 83A.

45. We also reject the contention, in the second ground of appeal, that the judge erred in her construction of section 83A(3)(f) of the Act. Ms Malcolm is of course correct to point out that the reference in that paragraph is to "all prosecutions", and we agree with her that it would be an error of law if the judge treated that paragraph as irrelevant merely because the respondent, if extradited, would stand trial alone. We do not however agree that the judge fell into that error. When she said in her judgment that Lee had already been separately tried, and continued

> "Therefore, this is not a consideration in respect of co-defendants"

we understand her to have meant only that as a matter of fact, this was not a case in which extradition would result in the respondent standing trial jointly with one or more US citizens. In evaluating the weight to be given to (f), that is a relevant fact: the prospect that extradition would result in two or more persons accused of the same offending being jointly tried may well be a more weighty factor in favour of extradition than the prospect (to which Ms Malcolm rightly draws attention) that it will result in the extradited person being tried, and if appropriate sentenced, under the same law and in accordance with the same rules of evidence and procedure, as others who have already been convicted.

46. As to the judge's overall evaluation of the forum issue, the issue for this court is whether crucial factors should have been weighed so significantly differently as to make her decision wrong. There are two broad reasons why we are unable to accept the appellant's submission that the judge should have decided the forum issue differently.

47. First, skilfully though the points were argued by Ms Malcolm, we are not persuaded that the judge should have reached a different conclusion about any of the three individual factors on which the appellant relies. As to (d), it was and is accepted by the appellant that the relevant evidence could be made available in this country, albeit that expense and inconvenience would be involved. Whether there is an offence in this country which corresponds to the extradition offence is in our view a matter to be considered under (c) and/or (f), the existence of such an offence being presumed in the opening words of (d). But in any event, the evidence before the judge was Mr McHaffie's statement which on its face acknowledged that there are offences with

which the respondent could be charged in this country, albeit that they are not in his view "an ideal fit to the facts".

48. As to (e), it is not clear to us whether further investigative work was in fact necessary to establish a connection between the respondent and Lee: there seems to have been no information before the judge as to the nature and extent of the evidence already available to the US authorities. However, we do not think that further detail could assist the appellant in relation to this factor: either more investigation was necessary, in which case there would be delay whether the respondent were prosecuted in this country or in the USA; or the investigation was effectively complete, in which case there would be no significant delay in this regard in either jurisdiction. With respect to the judge, she dealt with this factor very briefly. She was however entitled to accept Mr Proctor's evidence that any issue as to the respondent's health or competence would substantially lengthen the proceedings. Given the unchallenged evidence of the psychiatrists, that was a reason for concluding that proceedings in the USA would not in practice be concluded within 70 days. In our judgment, it was open to the judge to conclude that prosecution in this country was unlikely to result in delay.

49. We have already indicated our conclusion as to the suggested error of law by the judge in relation to (f). There is force in Ms Malcolm's submission that there is a public interest in joint offenders being dealt with in the same jurisdiction and under the same law, even if one has pleaded guilty and the other is to stand trial alone. But the weight to be given to that public interest will vary according to the circumstances, and in this case it had to be set against the fact that the US authorities had shown that they were in principle willing to agree to the respondent's being prosecuted in this country. Moreover, the judge was in our view correct to anticipate that the evidence against the respondent would largely come from an analysis of communications, and that it would be practicable for the necessary witnesses to give their evidence via video link. In those circumstances, it was open to the judge to conclude that overall, this factor weighed against extradition.

50. The second broad reason for our decision is that the appellant has been unable to challenge the judge's evaluation of (g) as a weighty factor against extradition. The judge had heard the evidence and observed the respondent and his mother during the extradition hearing, and clearly regarded this as an important matter. The appellant, rightly, has not sought to argue to the contrary. Even if we had been persuaded that there was valid criticism of the judge's assessment of all or any of factors (d), (e) and (f), it would still have been necessary to give due weight to (g) in deciding whether extradition would not be in the interests of justice.

51. In those circumstances, and for those reasons, it cannot in our judgment be said that the issue as to the forum bar should have been decided differently. The judge's overall evaluation was not wrong, and the relevant matters should not have been weighed so significantly differently that this court should allow the appeal. The appeal accordingly fails, and is dismissed.