THE HIGH COURT

[2024] IEHC 514

BETWEEN **Record No 2024 EXT 23**

MINISTER FOR JUSTICE

APPLICANT

v.

STEPHEN ANDREW MC LAUGHLIN [TCAW#1]

RESPONDENT

AND

BETWEEN **Record No 2024 EXT 48**

MINISTER FOR JUSTICE

v.

STEPHEN ANDREW MC LAUGHLIN [TCAW#2]

JUDGMENT of Mr. Justice Patrick McGrath delivered on the 14th of June 2024

1. In this application, the applicant seeks an order for the surrender of the respondent to the United Kingdom on two Trade and Co-Operation Agreement Warrants ('TCAWs')

TCAW#1 & Record No. 2024 EXT 23

2. The first TCAW was issued by District Judge George Conner, a District Judge sitting at Belfast Magistrates Court, on the 12th of January 2024. This TCAW is an accusation warrant and seeks the surrender of the respondent for prosecution in relation to seven offences allegedly arising from one incident being:-
   - One offence of Attempted Murder contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Common Law
   - One offence of Threat to Kill contrary to Section 16 of the Offences Against the Person Act, 1861
   - Two offences of Assault contrary to common law and Section 47 of the Offences Against the Person Act, 1861
   - One offence of Criminal Damage contrary to the Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977, and;
   - Two offences of Dangerous Driving contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995

3. TCAW#1 was endorsed by the High Court on the 1st of February 2024. The Respondent was arrested and produced to the High Court on the 2nd of February 2024. The Respondent, having been refused bail, has been remanded in custody on this matter since the date of his arrest.

4. I am satisfied that the person before the court, the respondent, is the person in respect of whom TCAW#1 was issued.

5. I am satisfied that none of the matters referred to in section 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the 2003 Act"), 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. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met.

7. No issue has been raised in relation to correspondence on the offences set out in this Warrant. It is clear, from a reading of the TCAW and particularly paragraph (e) thereof that correspondence is established with the following offences in Irish law:-

    a. Attempted Murder contrary to Common Law
    b. Threats to Kill contrary to section 5 of the Non-Fatal Offences Against the Person Act, 1997
    c. Assault causing harm contrary to section 3 of the Non-Fatal Offences Against the Person Act, 1997
    d. Criminal Damage contrary to section 2 of the Criminal Damage Act, 1991; and
    e. Dangerous Driving contrary to section 53 of the Road Traffic Act, 1961

8. The Respondent delivered points of objection dated the 14th of February 2024 but only pursued the following grounds at the hearing of this action:

- Surrender is prohibited by s21A of the 2003 Act as no decision has been made by the authorities in the issuing state to put him on trial for the offences set out in the warrant at the time the TCAW was issued;
- If the respondent were to be convicted of these offences in the issuing state there is a real risk he would receive a sentence incorporating an element of preventative detention in breach of his rights under Article 38.1, 40.3.1 and 40.4.1 of the Constitution, Articles 5 and 8 of the European Convention on Human Rights and / or Articles 6 and 7 of the Charter of Fundamental Rights. In the circumstances it is said his surrender is prohibited under s37 of the 2003 Act;
- Surrender of the Respondent would constitute a disproportionate interference with his right to respect for his family and private life under Articles 40.3.1 and 41 of the Constitution, Article 8 of the European Convention on Human Rights ['the Convention'], Article 7 of the Charter of Fundamental Rights, such that his surrender is prohibited under s37 of the 2003 Act;

TCAW #2 & Record No. 2024 EXT 48

9. The second TCAW (TCAW#2) was issued by District Judge Christopher Williams, a District Judge sitting at Southend Magistrates Court, on the 14th of February 2024. This TCAW is a conviction warrant and seeks the surrender of the respondent in order to serve the remaining part of a sentence of 7 years and 121 days imposed upon him in 2016, of which a period of 341 days remains to be served. This sentence was imposed at Basildon Crown Court on the 16th of June 2016 and the Respondent was released on licence in Northern Ireland on the 15th of February 2018. On the 23rd of September 2018 he was recalled to prison as he had allegedly committed further

offences, failed to attend probation appointments and displayed poor behaviour. The Respondent has been at large since the issue of this recall and the licence is due to expire on the 17th of January 2025.

10. TCAW#2 was endorsed by the High Court on the 27th of February 2024. The Respondent was arrested on that date and, having been refused bail, he has been remanded in custody on this warrant thereafter.

11. I am satisfied that the person before the court, the respondent, is the person in respect of whom TCAW#2 was issued.

12. I am satisfied that none of the matters referred to in section 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended ("the 2003 Act"), arise for consideration in respect of this TCAW and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.

13. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months' imprisonment.

14. The Respondent delivered points of objection dated the 14th of February 2024 but only pursued the following grounds at the hearing of this action:

    (i) Correspondence is not established and therefore surrender is prohibited under s38 of the 2003 Act;

(ii) The offence to which the sentence in the UK relates appears to have, at least in part, been committed in a place other than the issuing state and surrender is prohibited under s44 of the 2003 Act;

(iii) Surrender of the Respondent would constitute a disproportionate interference with his right to respect for his family and private life under Articles 40.3.1 and 41 of the Constitution, Article 8 of the European Convention on Human Rights, Article 7 of the Charter of Fundamental Rights, such that his surrender is prohibited under s37 of the 2003 Act;

(iv) If surrendered the Respondent will not be guaranteed credit for the time he has spent in custody pending the determination of these proceedings, credit to which he is entitled under the Trade and Co-Operation Agreement;

(v) There is a lack of clarity in the TCAW and there is suggestion therein that he is being sought for the purposes, not only of serving a sentence, but also of prosecution.

Ground common to both TCAWs

15. The Respondent argues that his surrender to the United Kingdom in relation to this request and these warrants would constitute a disproportionate interference with his family and / or private life and ought therefore to be refused under s37 of the 2003 Act.

16. The family and private life considerations the Respondent relies upon are set out at paragraphs 6 to 14 of his affidavit, sworn on the 19th of April 2024. The Respondent therein states that he was born in Carndonagh, County Donegal and lived there with

his family until the age of 16 when he moved to the United Kingdom where he worked for some time in the construction industry. He then relocated to Northern Ireland where he formed a relationship with Anne Marie Harkin and lived with her for over 20 years, during which time they had four children now aged 17 to 11. They lived in Limavady, County Derry and he continued to live in or around Derry after they separated. The Respondent returned to Donegal in October 2022 and went to live with his aging parents in the family home. Before his arrest he says he spent a lot of time looking after his mother who has health issues, and he also has a large number of family members still living in the Carndonagh area. He has done some occasional work whilst living in Donegal.

17. It is well settled that member states (including the United Kingdom under the EU – UK Trade and Co-Operation Agreement) should execute any warrant on the basis of mutual recognition and that it is only in a truly exceptional case that Article 8 rights outweigh the requirement to surrender.

18. In *Minister for Justice v Ostrowski* [2012] IESC 57 the Supreme Court made it clear that to be successful in cases such as the present, a family/ private rights objection to surrender must cross a high threshold to even engage Article 8 of the Convention. Again in *Minister for Justice v Verstaras* [2020] IESC 12, that Court said that, when considering such objections to surrender, there must be cogent evidence to rebut the presumption in s4A of the Act, the circumstances must be shown to be well outside the norm, that is truly exceptional and, in the words of S37 of the 2003 Act they must be such as to render surrender incompatible with the States obligations under A8(2) of Convention.

19. There is nothing on the facts of this case which comes close to something 'truly exceptional' such as engage the possibility that surrender would be incompatible with the States obligations under the Convention and would require this court to carry out a proportionality test. The facts relied upon by Mr McLoughlin as constituting an interference with his Article 8 family and privacy rights, are not in any way exceptional or outside the norm of cases where the surrender of a person is sought for either prosecution or the serving of a custodial sentence. This ground of objection is not therefore made out.

TCAW#1

20. The facts in relation to this warrant are set out in detail at paragraph (e) thereof and describe an alleged attack by the Respondent on his former partner in front of their young children at Ness Woods Country Park, Derry on the 19th of September 2022. During the course of this attack, it is alleged that Mr McLaughlin attempted to murder his former partner Anne Marie Harkin and also made threats to kill her. He is also alleged to have assaulted his daughter Niamh Harkin and a friend of his ex-partner, Julie McAllister, to have caused Criminal Damage and to have driven dangerously during this prolonged incident.

21. The Respondent made the following objections at the section 16 hearing:-

- Surrender is prohibited by s21A of the 2003 Act as no decision has been made by the authorities in the issuing state to put him on trial for the offences set out in the warrant at the time the TCAW was issued;
- If the respondent were to be convicted of these offences in the issuing state there is a real risk he would receive a sentence incorporating an element of preventative detention in breach of his rights under Article 38.1, 40.3.1 and 40.4.1 of the Constitution, Articles 5 and 8 of the European Convention on Human Rights and / or Articles 6 and 7 of the Charter of Fundamental Rights. In the circumstances it is said his surrender is prohibited under s37 of the 2003 Act;
- Surrender of the Respondent would constitute a disproportionate interference with his right to respect for his family and private life under Articles 40.3.1 and 41 of the Constitution, Article 8 of the European Convention on Human Rights, Article 7 of the Charter of Fundamental Rights, such that his surrender is prohibited under s37 of the 2003 Act.

22. I have already rejected the 'family / private life' submission, which is made in respect of both TCAWs, earlier in this Judgment.

Section 21A Objection

23. The Respondent submits that surrender on this TCAW is prohibited by s21A of the 2003 Act as no decision had been made by the authorities in Northern Ireland to put him on trial for the offences set out in the warrant at the time the warrant issued.

24. Section 21A of the 2003 Act provides that:-

'(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him or her for, that offence in the issuing state.

(2) Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved'

25. The interpretation of this provision has been the subject of a number of decisions of the Supreme Court including *MJELR v Bailey* [2012] 4 IR 1*, MJELR v Olsson* [2011] 1 IR 384*, MJELR v Pocevicius* [2015] IESC 59 and *MJELR v Campbell* [2022] IESC 21. From these authorities a number of principles have clearly emerged:

    a. Effect must be given to the presumption in Section 21A(2) and such presumption will only be rebutted and the Court put on inquiry as to whether decisions to charge and try a Respondent were made at the time of issue of the warrant on the basis of evidence adduced which is *'sufficiently cogent in its terms, and concerning in its substance';*

    b. Statements made in an EAW (and here TCAW) that a person is sought for the purposes of a criminal prosecution must be read in light of recital 10 of the Framework Decision which describes the mechanism of the European Arrest Warrant as being based on a high level of confidence between Member States of the European Union;

    c. The decision to charge and try need not be irrevocable and what is important is that, at the time it was issued, there then existed on the part of the requesting state an intention to prosecute the requested person for an offence;

    d. It is impermissible to surrender a person for the purposes of assisting in an investigation or where no present intention to charge and try exists.

26. At the heading of this warrant, it is firstly stated that the warrant was issued by a '*competent judicial authority'* (no issued is taken in this regard) and then that *'I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order'.* The warrant itself, at paragraph (b), says that the domestic warrant is one issued for 'accusation' so it is clear from the outset that this TCAW is issued for the purposes of *'conducting a criminal prosecution'*.

27. The warrant, issued by George Conner a District Judge in Belfast Magistrates Court is otherwise in order and there is nothing to indicate therefrom that there is any intention to carry out any further investigations if the Respondent is surrendered.

28. The Respondent's solicitor, Mr Seamus Quigley, has filed an affidavit dated the 22nd of April 2024. At paragraphs 3 and 4 he refers to 'conversations' which he had with a Detective Constable who he understands is the officer in charge of this case in Northern Ireland and to his beliefs as to what might happen on the part of the CPS if Mr McLaughlin were surrendered. He says as follows in this regard:-

'3. I can confirm that in connection with Mr Stephen McLoughlin I have spoken with Detective Constable Lynn Smith who I understand is the officer in charge of the case to which the prosecution warrant relates and I understand from my conversation that if surrendered Mr McLaughlin will be charged with the offences set out in the warrant but that these charges will then be reviewed by the PPS for Northern Ireland. The review of charges by the PPS is entirely common and in no way unusual. The fact that he is being extradited in relation to charges set out in the warrant does not mean that he will eventually be put on trial for those offences.

3. I am of the view that the PPS have already looked at the file generally and it is they who have directed the charges but I would once more state that it more than likely that those charges will be reviewed'.

29. The Respondent says that these comments of Mr Quigley are sufficient to put this court on inquiry, necessitating at a minimum a further section 20 request, as to whether a decision to charge and try has been in fact made by the issuing judicial authority.

30. One of the leading authorities on this issue is the decision of O'Donnell J giving the judgement of the Supreme Court in *Minister for Justice v Olsson* [2011] 1 I.R. 384. In that case the Swedish authorities sought the surrender of Mr Olsson for the purposes of prosecution. Under Swedish law however the police would, following his return, have to interview the respondent prior to concluding their investigation and it was only after then that a final decision could be made to prosecute Mr Olsson. The High Court and, on appeal the Supreme Court, dismissed the objection that his surrender should be refused as there had been no decision made to 'charge' and 'try' the respondent. Having referred to the presumption in s21A of the 2003 Act O'Donnell J stated:

'26. The issue here, however, is not merely one of the evidence before the court. As is apparent, s 21A(2) of the Act of 2003, as inserted by s.25 of the Act of 2005, contains a presumption that a decision has been made to charge the person and try him for the offence. Furthermore, the opening lines of the European arrest warrant itself, request that the person mentioned below 'be arrested and surrendered for the purposes of conducting a criminal prosecution..' That statement, and the further statements made

in Ms. Maderud's affidavit in relation to the practice of the Kingdom of Sweden, must also be read in the light of recital 10 of the Framework Decision which describes '[t]he mechanism of the European arrest warrant [as being] based on a hight level of confidence between member states'.

31. At paragraph 33 later, O'Donnell J stated:

'[33] When s.21A speaks of a 'decision' it does not such decisions as final or irrevocable, nor can it be so interpreted in light of the Framework Decision. The fact that a further decision might be made eventually not to proceed, would not therefore mean that the statute had not been complied with, once the relevant intention to do so existed at the time the warrant was issued. The Act of 2003 does not require any particular formality as to the decision; in fact, s.21 focuses on (and requires proof of) the absence of one. The issuing state does not have to demonstrate a decision. A court is only to refuse surrender a requested person when it is satisfied that no decision has been made to charge or try that person. This would be so where there is no intention to try the requested person on the charges at the time the warrant is issued. In such circumstances, the warrant could not be for the purposes of conducting a criminal prosecution'.

32. And continuing at paragraph 36, he stated:

'[36]…in short the intention of the Swedish prosecution authority to bring the respondent before the Swedish court for the purpose of being charged is but a step in the prosecution process. For the reasons set out above the High Court was correct to conclude that the respondent was not being sought only to be questioned as part of

the investigation and that there was a decision to charge the respondent within the meaning of the Act of 2003. Certainly, even without the presumption contained in s.21(A), the section requires clear proof. Once a court finds the European arrest warrant to be in order (and therefore on its face a request made for the purpose of prosecution or trial), then before the court can refuse to surrender a person requested under such a warrant, it must be satisfied by cogent evidence to the contrary that a decision has not been made to charge the particular person with, and try him or her for, the offence'

33. Applying the reasoning of that Judgment to the present facts:-

(i) There is a presumption that this TCAW was issued for the purpose of charging and trying Mr McLaughlin with the offences set out therein;

(ii) It is stated on its face to be for the purpose of conducting a criminal prosecution and this has to be read in the light of the high level of confidence between this State and the United Kingdom which underlies the mechanism of the Framework Decision;

(iii) There is nothing before the Court which would suggest that the TCAW has been issued to allow further steps to be taken prior to a decision being made to charge and try this respondent. Nor is there anything to suggest that he is sought for the impermissible purpose of 'investigation'. This warrant, unlike the one under consideration in *Olsson*, is received from another state party to the Framework Decision who has a criminal prosecution and trial system founded in the common law and which has criminal procedures broadly similar to those in this jurisdiction. As a matter of common knowledge, the trial procedures in both Ireland and Northern Ireland involve a person being

charged and then put on trial, with no intervening investigatory process unlike what may happen in many of the continental systems;

(iv) There is nothing to rebut the presumption that there is a current present intention to charge and try the Respondent, if surrendered, for the offences for which he is sought. A future review of charges does not mean that such a present intention does not exist – the review of charges is a common feature of prosecutions in this jurisdiction. In any event the evidence offered in this regard falls well short of being cogent evidence sufficient to rebut the presumption under s.21A or put the court on inquiry in this regard. Indeed, Mr Quigley himself says that the review of files is common and expresses the belief that it probably has already been reviewed by the PPS in Northern Ireland.

34. Having considered all the evidence on this issue it is this court's view that there is nothing by way of cogent evidence to suggest that a decision has not been made to charge and try the respondent with the offences for which this warrant has been issued. This ground of objection is therefore dismissed.

Preventative Detention

35. At paragraph 6 of the Respondents solicitors Affidavit, dated the 25th of April 2024, he expresses the opinion that it is likely that, in the event of his conviction, Mr

McLaughlin would receive an *'extended custodial sentence'* . He states that the concept behind such a sentence is dangerousness and that the sentence involves an element of preventative detention.

36. It is submitted that to expose the Respondent to such a sentence, involving a form of preventative detention, would amount to a breach of his constitutional rights. Although the Irish Courts have not considered the compatibility of an 'extended sentence' with Irish Law, the Respondent refers to the cases of *Minister for Justice v MK* [2018] IECA 110 and *Minister for Justice v Nolan* [2012] IEHC 249 & [2013] IESC 54 where the Superior Courts found that the UK *'indeterminate sentence for public protection'* [IPP] was incompatible with Irish law due to the element of preventative detention contained within the same.

37. In support of this submission, the Respondents solicitor states as follows at paragraph 6 of his affidavit:

'If Mr McLaughlin is convicted of the attempted murder charge or other charges he could receive an extended custodial sentence. The concept behind an extended custodial sentence is one of dangerousness and there is an element of preventative detention. It is also possible that if he is convicted of the attempted murder that he could receive a life sentence and ultimately a person can only be released from a life sentence after he or she has served the minimum tariffs set by the Judge and even then, and once after the Parole Commissioners take the view that it is safe for him to be released normally with a host of conditions'

38. As previously observed, Section 4A of the 2003 Act provides for a presumption that member states will comply with the requirements of the Framework Decision, which

incorporates respect for fundamental rights, unless the contrary is shown. As the United Kingdom has been designated as a member state for the purposes of the 2003 Act, this presumption applies to that state.

39. It is well settled law that the surrender of a requested person will not be refused simply on the basis that the sentence for which he or she is sought to serve in the requested country is one which might not be compatible with the Constitution – see e.g., *Minister for Justice v Brennan* [2007] 3 I.R. 732 *Minister for Justice v Balmer* [2017] IR 562. In *Brennan* Murray CJ rejected the idea that an order for surrender ought to be refused if the manner in which a trial is conducted in a requesting state, including the manner in which a sanction is imposed, does not *'conform to the exigencies of our constitution as if such a trial or sentence were to take place in this country'.*

40. Having observed that few, if any, could be surrendered were a test to be adopted which required the application of our own constitution and laws to such applications and noting the manner in which fundamental rights are protected in different countries varies according to national laws and constitutional traditions, he went on to say at paragraph 40 thereof:

'40. That is not by any means to say that a court, in considering an application for surrender, has no jurisdiction to consider the circumstances where it is established that surrender would lead to a denial of fundamental or human rights. There may well be egregious circumstances, such as a clearly established and fundamental defect in the system of justice of a requesting state, where a refusal of an application for surrender may be necessary to protect such rights. .... The sole matter which I wish to make clear here is that the mere fact that a trial or sentence may take place in a

requesting state according to procedures or principles which differ from those which apply, even if constitutionally guaranteed, in relation to a criminal trial in this country does not of itself mean that an application for surrender should be refused pursuant to s. 37(2) of the Act'.

41. This is a case where the Respondent is inviting the court to speculate as what might happen were he to be surrendered and were he be to convicted of one or more of the offences for which his surrender is sought. It is suggested that he *'could'* receive an *'extended custodial sentence'* and that the concept behind such a sentence is *'one of dangerousness and there is an element of preventative detention'*

42. There is no indication of the likelihood of such an 'extended sentence' being imposed in this case. The Respondent has not offered any expert evidence explaining the operation of such a sentence and in what circumstances such a sentence would likely be imposed. Nor has he explained what is meant by Mr Quigley when he states that such a possible sentence involves *'an element of preventative detention'.*

43. The facts and circumstances under consideration here are entirely different from those in the *Nolan* case. There the High Court and, on appeal, the Supreme Court were dealing with a situation where the surrender of a respondent has been sought to serve an IPP in circumstances where Mr Nolan had previously served the punishment element of that sentence and where his return was being sought to serve the 'public protection' or preventative part of that IPP sentence. In addition, that form of sentence was one which had been condemned by the European Court of Human Rights as incompatible with the Convention.

44. In the circumstances of this case there is no basis to conclude that there is a risk that the Respondents surrender to Northern Ireland might lead to a denial of his fundamental or human rights. The evidence adduced has not demonstrated such egregious circumstances which would lead this court to consider that refusal of surrender may be necessary to protect his fundamental rights.

Grounds of Objection TCAW#2

Correspondence

45. This is not a case where the offence for which surrender is sought is a 'ticked box' offence. In other words, it is not an offence within any of the categories set out in Article 2.2 of the Framework Decision such that it would not be necessary to demonstrate correspondence with an offence under Irish Law. It is therefore an offence where it is necessary to show correspondence in accordance with s38 of the 2003 Act.

46. Section 5 of the 2003 Act provides:-

'For the purposes of this Act, an offence specified in a European 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 European arrest warrant is issued, constitute an offence under the law of the State'.

47. The relevant principles for showing correspondence are now well established. In assessing correspondence, the question is whether the acts or omissions that constitute the offence in the requesting state would, if carried out in this jurisdiction, amount to a criminal offence – *Minister for Justice v Dolny* [2009] IESC 48

48. In the TCAW itself it is said that the Respondent was convicted of an offence of *'Conspiracy to Facilitate the commission of a breach of Immigration Law, contrary to Section 1(1) of the Criminal Law Act, 1977'.* At paragraph (e) of the warrant it was further stated that the *'requested person was convicted for his role in the illegal smuggling of people into the UK in breach of immigration laws, designed to control their entry. This was a large and organised smuggling operation.'*

49. A request was issued by this Court pursuant to s20 of the 2003 Act seeking further details in relation to the factual basis of the offence. In a reply dated the 25th of February 2024, the issuing state stated as follows;-

'1. Part (e) of the Arrest Warrant

Part (e) of the Arrest Warrant states that it relates to one offence, namely conspiracy to facilitate a breach of immigration law, contrary to section 1(1) of the Criminal Law Act, 1977. Please provide a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person

Stephen McLaughlin (SM) was convicted and sentenced for his role in a sophisticated and well-organised and human trafficking operation. On the 5 August 2014, 12

Afghan nationals, who had been unlawfully concealed within the pallet lockers of a lorry, were located at the French Eurotunnel terminal in France.

On the 16 August 2014, 35 Afghan nationals, who were being smuggled into the UK at Tilbury Port, were found. The shipping container, containing the illegal entrants, was discovered before it was off-loaded from the ship that had carried it from Belgium.

Dock workers heard knocking and shouting from inside the container. The police attended and 35 people were found in a distressed state, suffering from breathing and other difficulties, in a confined space, where they had been since the previous day.

There were 20 adults and 15 children. One man, who had been travelling with his wife and child, was found to be deceased.

Stephen Mc Loughlin's role involved his working closely with co-defendants, Tim Murphy and Michael McGlinchey

SM was responsible for making the majority of the travel arrangements, for the relevant vehicles/container, via his shipping account. His account was used to book the lorry (driven by Tim Murphy) onto Eurotunnel from France to Folkstone. His account was used to ship the container from Dover to Calais (where it was collected by Tim Murphy). The account was used to book the return journey from Zeebrugge to Tilbury, after it had been loaded with the 35 illegal entrants.

SM also met up with other conspirators, to plan and discuss the smuggling operation. He kept in touch with and regularly called the other conspirators, during the smuggling operations.

At the sentence hearing, it was said that SM was not at the top end of the organisation but came slightly below that. SM provided "the transport, the yard where the clandestine would have ended up, the container and the means for booking". He was also involved in recruiting other participants into the operation'.

50. This TCAW relates to one offence (see paragraph (e) of the TCAW) of *'Conspiracy to facilitate the commission of a breach of Immigration Law, contrary to Section 1(1) of the Criminal Law Act,* 1977'. The respondent was sentenced to a term of imprisonment of 7 years and 121 days for this single offence on the 16th of June 2016, was released therefrom on licence on the 15th of February 2018. This licence was revoked on the 23rd of September 2022 and is now due to expire on the 17th of January 2025.

51. The Applicant submits that the offence in the warrant corresponds to the offence at Irish Law of assisting unlawful entry into, transit across or presence in the State, contrary to section 6 of the *Criminal Justice (Smuggling of Persons) Act, 2021*. Section 6 provides:-

'(1) A person is guilty of an offence if he or she intentionally assists the entry into, transit across or presence in the State of another person, where -

(a) such entry into, transit across or presence in the State is in breach of a specified provision, and;

(b) *the first-mentioned person knows or has reasonable cause to believe that such entry into, transit across or presence in the state is in breach of a specified provision.*

(2) A person who, in a place outside the state, engages in conduct that would, if the conduct occurred in the State, constitute an offence under subsection (1) is guilty of an offence.

(3) A person who, in a place outside the State, aids, abets, counsels, procures or attempts the commission of an offence under subsection (1) or (2) is guilty of an offence'.

52. For the purposes of section 6 *'assists'* includes '*procures, organises or facilitates'* and a *'specified provision'* means any of the following-

'(a) section 4,5 or 6 of the Act of 2004 [the Immigration Act, 2004], *or*

(b) a provision that is the subject of an order under section 29……'

53. The offence of which the respondent was convicted relates to his conduct both in relation to the incident at the French Eurotunnel Terminal and Tilbury Port. The Court must be satisfied, as submitted by the Respondent, that all aspects of the Respondents conduct for which he was punished could correspond with an offence, or offences, in Irish Law. He submits that it is not readily apparent that the portion of the offence relating to the Afghan nationals discovered in France could amount to an offence under Irish Law. The Respondent further questions what '*specified provision'* the Minister contends would have been breached had similar actions or conduct taken place in this jurisdiction.

54. I am satisfied that the actions of the Respondent, both in relation to the 35 Afghan nationals at Tilbury Port and the 12 Afghan nationals at the French Eurotunnel Terminal, correspond with an offence under Irish Law.

55. The essence of the offence under Section 6(1) of the 2001 Act is the intentional *'assisting'* of entry into, transit across or presence in the state of another person in circumstances defined therein. This assistance can include relevant conduct by a person outside the State. This Respondent was involved with others in assisting (which includes procuring, organising or facilitating) the illegal entry of these two groups of people into the United Kingdom. It is immaterial for these purposes that he did not succeed in achieving the purpose of this arrangement, namely the illegal entry of these Afghan nationals into the United Kingdom.

56. The fact that this conduct was charged as a single conspiracy type offence in England is a matter for the authorities in that jurisdiction. What this court must consider is whether all of the conduct in question, both that part of the conduct at Tilbury and that part at Eurotunnel France, could correspond with an offence or offences under Irish law.

57. The evidence adduced by the Applicant, as amplified in the response received to the s20 request issued by this Court, demonstrates that the Applicant assisted, within the meaning of the 2021 Act, in arranging for the illegal entry of both groups of Afghan nationals, discovered in Tilbury Port and at the French Eurotunnel respectively, into the United Kingdom in breach of the immigration laws of that state. If he had assisted in the entry of non-nationals into Ireland in circumstances similar to those set out in the TCAW, the conduct in question would be in breach of a number of provisions of Irish law regulating entry into and presence in the State including:-

a. Section 4(2) of the Immigration Act, 2004 which provides:-

'(2) A non-national coming by air or sea from a place outside the State shall, on arrival in the State, present himself or herself to an immigration officer and apply for a permission'

b. Section 5(1) of that Act which provides:-

'(1) No non-national may be in the State other than in accordance with the terms of any permission given to him or her before the passing of this Act, or a permission given to him or her after such passing, by or on behalf of the Minister'

58. I am therefore satisfied that the acts or omissions with constituted the offence for which the Respondent was convicted and for which his surrender is sought on this TCAW, corresponds to an offence contrary to Section 6 of the *Criminal Justice (Smuggling of Persons) Act, 2001*.

Section 44 and Extra-Territoriality

59. Section 44 of the 2003 Act provides-

'The surrender of a person to an issuing state under this Act shall be refused where 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'

60. The Respondent, referring to that part of the offence concerning the presence of the 12 Afghan nationals in the French Eurotunnel terminal in France, submits there is an extraterritorial element to the offence. In this regard he further refers the Court to page 6 of the TCAW where it is certified that *'the offence is an extra-territorial offence'*. He submits that section 44 of the Act is engaged and that it is not apparent how this part of the Respondents conduct would amount to or correspond to an offence under the law of the State.

61. It is submitted by the Applicant that, on the facts set out in the TCAW, such conduct (that part relating to the Afghan nationals discovered on the French side of the Eurotunnel) would not, if charged in this State, be considered to have any extraterritorial element. The Minister says that it is clear that what was alleged against the Respondent was that he was part of a criminal gang, the purpose of which was to illegally smuggle persons into the United Kingdom. The Respondent's conduct was part of the conspiracy entered into by that gang to smuggle illegal immigrants into the United Kingdom. Some of the acts done in furtherance of the same were however done in France. The Minister says that it is clear from the documentation provided however that significant acts in furtherance of this conspiracy took place in the United Kingdom.

62. As Burns J noted in ***Minister for Justice v Jelecutean*** [2021] IEHC 375 at para 22:

> *'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'*

63. Significant acts in furtherance of this conspiracy took place in the United Kingdom. The conduct charged against the Respondent in the United Kingdom related to his

involvement in what was a transnational conspiracy to arrange for the illegal importation of non-nationals into the United Kingdom. The fact that the United Kingdom authorities may have deemed or declared this to be an extraterritorial offence is a matter of English law. What this court has to consider is whether, as a matter of Irish Law, similar type conduct could, if prosecuted in this State, be considered extraterritorial **and** conduct which could not, for this reason, be prosecuted in Ireland. Section 44 of the Act only prohibits surrender where both these conditions are met.

64. As already stated, the conduct of the Respondent, in relation to both the Tilbury and Eurotunnel events, could correspond with conduct criminalised under Section 6(1) of the 2021 Act. It is in reality a transnational crime, which involves assisting in the illegal entry of non-nationals into the state and there will almost inevitably be conduct done inside and outside the state during the course of the commission of such an offence. If an accused was prosecuted in this State for conduct similar to that in issue in this warrant, namely arranging the illegal entry of non-nationals into Ireland in the circumstances explained, where a substantial part of that conduct was done within the State, then the offence would as a matter of general principle be committed in the State and no issue of extra territoriality would arise under Irish law.

65. In any event section 6(2) of the 2021 Act criminalises conduct done by a person outside the State that would, if done inside the State, constitute an offence contrary to Section 6(1) of that Act. On the information provided in relation to the offence at issue here the Respondent could, if subject to an Irish investigation and prosecution in relation to similar type conduct, have been charged with the conduct alleged against

him for assisting unlawful entry into this State whether done inside or outside this State.

66. Section 44 of the Act is not therefore in issue in this case. Either the conduct, or rather a similar course of conduct involving arranging the illegal entry of non-nationals into Ireland, could be treated as a crime committed within the State due to the substantial acts done in furtherance of this crime within the State and no issue of extra territoriality arises. Or the conduct is, because it is done outside the State, treated as extra territorial but in circumstances where section 6(2) extends the state's criminal jurisdiction to criminalise such extraterritorial conduct. On either analysis section 44 is not engaged and there is no bar to surrender under that section.,

Credit for Time Served

67. Article 624(1) of the Trade and Co-Operation Agreement states that:-

'The issuing State shall deduct all periods of detention arising from the execution of an arrest warrant from the total period of detention to be served in the issuing State as a result of a custodial sentence or detention order being passed'

68. The Respondent has been in custody in respect of this TCAW since the 27th of February 2024 and is therefore entitled to credit in the United Kingdom for time served from that date. The Respondent claims that there is a lack of clarity or doubt as to whether this will occur if he is surrendered. His primary submission is that, given the doubt in this regard, surrender ought to be refused or at the very least the matter should be clarified with the British authorities.

69. At paragraph (e) of this TCAW it is stated that, as of 11th of February 2024, there are 341 days remaining on the terms of the licence, namely that the Respondent is being recalled to serve those 341 remaining days. It is also said there that *'the licence is due to expire on 17/01/2025'* which is 341 days from the 11th of February 2024. The TCAW was issued on the 14th of February 2024 and, as noted above, the Respondent has been in custody thereon since the 27th of February 2024.

70. The Respondent has filed two affidavits of Sean Doherty, Barrister in the Bar Library, Northern Ireland, wherein he is asked to consider the issue of whether the Respondent would receive credit for time spent in custody in these extradition proceedings, were he to be surrendered to Northern Ireland.

71. In his first Affidavit this issue was dealt with by Mr Doherty as follows:-

'4. The warrant appears to indicate that 'as at 11 February 2024, there are 341 days remaining of the terms of the license' Is this the length of the sentence he will serve if he is surrendered? Is it possible to say what the length of the sentence he will be required to serve is?'

In respect of this warrant he will in the event of extradition remain as a sentenced prisoner further to license revocation until the sentence expires 341 days after his return. As he is 'unlawfully at large' the release date will be deferred until such time as he is returned to custody. There are possibilities for a release prior to then (see response to question 1 above) it is however unlikely PB would direct his release before the above date.'

72. In his second affidavit, dated the 26th of April 2024, he states therein that time spent in custody in Ireland in relation to a separate warrant (TCAW2) will, were he convicted following surrender to Northern Ireland, be deducted from any future sentence pursuant to Section 243 of the Criminal Justice Act, 2003. Insofar as this warrant, a conviction warrant, is concerned however Mr Doherty states:-

'As a result of being unlawfully at large, will Mr McLaughlin receive credit for time spent in custody on the extradition matter against the sentence left to be served? The sentence is deferred until such time as the requested person is no longer unlawfully at large. He will remain unlawfully at large until such time as her returns to prison in this jurisdiction.
In other words time spent in custody in the Republic will not impact upon the remaining time left to run on the sentence if he is returned to prison in the UK'

73. At page 5 of the warrant the issuing judicial authority states that '*the Licence is due to expire'*. And at page 7 thereof, the following is stated:

'The licence is due to expire on 17/01/2025. The requested person would be returned to prison to serve the remaining term of the licence. As at 11 February 2024, there are 341 days remaining of the term of the licence'

74. The issuing state are, pursuant to Article 624(1) of the Trade and Co-Operation Agreement, bound to deduct all periods of time this Respondent spends in custody in these extradition proceedings, from the time which he is required to serve on foot of

this warrant. There is a presumption that the issuing state will comply with this obligation as Section 4A of the 2003 Act provides:

'It shall be presumed that an issuing state will comply with the requirements of the relevant agreement, unless the contrary is shown'

75. The matters set out in the affidavits of Mr Doherty do not in my view raise a real concern that the United Kingdom will not comply with the requirements of Article 624(1) of the Trade and Co-Operation Agreement. In the warrant itself, it is stated that the Respondent is being sought to serve the remaining term of the licence, the licence expires on the 17th of January 2025 and, as of the 11th of February 2024 there are 341 days remaining of the term of the licence. There are in my view no grounds to raise a real concern that the Northern Ireland authorities will not honour their international obligations as set out in Article 624(1) of the Trade and Co-Operation Agreement.

Section 11(1)(A)

76. I do not consider that there is any lack of clarity in relation to this TCAW. The respondent is sought to serve a defined maximum period of time, namely 341 days as and from the 11th of February 2024 but this period of time will end or expire on the 17th of January 2025. The offence for which he was convicted and for which he was sentenced in Basildon Crown Court on the 16th of June 2016 is clearly identified at paragraph (c) of the TCAW namely *'Conspiracy to Facilitate the Commission of a breach of Immigration Law contrary to section 1(1) of the Criminal Law Act, 1977'*. At part (e) of the warrant it is stated that '*this warrant relates to in total 1 offences'* and goes on to set out the circumstances in which this offence was committed, which

was amplified following a s20 Request, and the circumstances in which the respondent is being sought to serve a maximum of 341 days custody.

77. Nothing in the TCAW raises any basis for the suggestion that there is some doubt as to whether he is also sought for prosecution for an offence of being 'Unlawfully at Large'. There is no domestic warrant seeking his arrest for such an offence, there is no description of the facts and circumstances of such an offence and no legal description of such an offence whether as a 'ticked box' offence under (e) I. or otherwise under (e) II. The inclusion of a standard form certification under s142 of the UK Extradition Act, 2003 – which may have been a mistake or oversight – does not in my view raise any realistic suggestion that there is a risk that he will be prosecuted for some unspecified offence, if returned to the United Kingdom.

Conclusion

78. For the reasons set out above, I dismiss the objections to surrender made by the Respondent in relation to both TCAW#1 and TCAW#2. I therefore propose to make an order under s16 of the 2003 Act ordering his surrender on foot of both warrants.