

**THE HIGH COURT  
AN ARD-CHÚIRT**

[2024 No. 129 EXT]

[2024] IEHC 583

**IN THE MATTER OF AN APPLICATION UNDER S. 16 OF THE EUROPEAN ARREST  
WARRANT ACT 2003, AS AMENDED.**

**BETWEEN**

**THE MINISTER FOR JUSTICE**

**APPLICANT**

**AND**

**MARTIN MCDERMOTT**

**RESPONDENT**

**JUDGMENT of Mr Justice David Keane delivered on the 2nd October 2024**

**Introduction**

1. The Minister for Justice ('the Minister') applies under s. 16(1) of the European Arrest Warrant Act 2003, as amended ('the Act of 2003'), for an order directing the surrender of Martin McDermott to the United Kingdom ('UK'), pursuant to a Trade and Cooperation Agreement arrest warrant ('the TCA warrant') issued by District Judge George Conner in Belfast Magistrates' Court in Northern Ireland ('N.I.'), as the issuing judicial authority, on 19 April 2024.

**The TCA arrest warrant**

2. The warrant seeks the surrender of Mr McDermott to prosecute him for each of two separate offences: first, the unlawful and malicious wounding of James Patrick Mitchell with intent to do grievous bodily harm at Galliagh Park in Derry/Londonderry on 20 October 2021, contrary to s. 18 of the Offences Against the Person Act 1861 ('the assault offence'); and second, criminal damage to a car belonging to the same person on the same date, contrary to Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977 ('the criminal damage offence'). Thus, I am satisfied that the provisions of s. 45 of the Act of 2003 (on the surrender of persons already tried and convicted in absentia) do not arise in this case. The TCA warrant recites that the first of those offences is punishable on conviction on indictment by a term of up to life imprisonment and the second is punishable on conviction on indictment by a term of up to 14 years imprisonment. It follows that I am satisfied that the surrender of Mr McDermott is not subject to the prohibition on surrender under s. 38(1)(a) of the Act of 2003 in respect of an offence that

does not carry a potential punishment of at least 12 months imprisonment. The decision on which the warrant is based is an arrest warrant issued on 19 April 2024 by the District Judge (Magistrate's Court) in Northern Ireland in respect of each of the two offences.

3. On 10 June 2024, the warrant was endorsed for execution by the High Court (P. Burns J).
4. By letter dated 11 June 2024, the Department of Justice wrote to the issuing judicial authority on behalf of the High Court to request the provision of additional information ('the request'). The issuing authority provided additional information in response to that request by letter dated 14 June 2024 ('the reply').
5. The warrant was executed on 15 July 2024. Mr McDermott was brought before the High Court (McGrath J) on that date. Being satisfied on the evidence that the person before the court was the person in respect of whom the warrant issued (just as I am now satisfied that that is so), the High Court fixed a date for the surrender application.
6. Points of Objection to surrender (wrongly described as a 'Notice of Opposition') were filed on Mr McDermott's behalf on an unspecified date in August. No affidavit has been sworn in support of the objections raised.
7. I heard the surrender application on 4 September 2024.

#### **The background**

8. The TCA warrant provides the following description of the circumstances in which the alleged offences were committed.
9. At approximately 3.30 a.m. on 22 October 2021, police received a report that a male, James Mitchell, had attended the Emergency Department at Altnagelvin Area Hospital with injuries allegedly sustained in an assault. Mr Mitchell provided a written statement on 26 October 2021. It contains the following narrative. On the evening of 21 October 2021, he received text messages from a friend asking him to meet that friend at Galliaugh Park in Derry/Londonderry. Mr Mitchell drove there in a Volkswagen Golf car, accompanied by his girlfriend, arriving at some time between midnight and 3 a.m. Shortly after he parked the car, his friend approached, opened the driver's side door, removed the car key from the ignition and stepped away. Mr Mitchell was then struck on the forehead by a bottle. The bottle smashed and the broken bottle was pushed into his face. There were two male assailants and Mr Mitchell was struck multiple times by each of those males. One of the males used a bottle and the other, who Mr Mitchell named as Mr McDermott, used an iron bar. Mr McDermott attempted to drag Mr Mitchell out of the car but was unable to do so as Mr Mitchell was still wearing his seatbelt. Mr Mitchell's girlfriend got out of the car and asked the males to stop. At that point, Mr Mitchell's friend said, 'Right boys, he's had enough', before returning the car key to Mr Mitchell. Mr Mitchell then drove to Altnagelvin Area Hospital.
10. In consequence of the assault he alleges, Mr Mitchell sustained a large laceration to his top lip, extending up to his nose and across the right side of his face; three lacerations to the back of his head; an abrasion to the right side of his forehead with an area of swelling

approximately 3cm in diameter; bruising and swelling to the left side of his forehead; an abrasion to the right side of his nose; and a laceration to the right side of his elbow.

11. From the contents of the reply to the court's request for additional information, the following additional information has emerged.
12. The criminal damage offence occurred as part of the same incident. In his statement of 26 October 2021, Mr Mitchell said that, during the attack, damage was caused to the Volkswagen car he was driving. The car is owned by Mr Mitchell's father. A bottle was thrown through the rear windscreen and the offside rear door was kicked, causing damage. It is alleged that Mr McDermott participated in the attack on Mr Mitchell and on his vehicle as part of a joint enterprise and that he damaged the vehicle without lawful excuse.

### **The issues**

13. In his points of objection, Mr McDermott puts the Minister on strict proof of the matters that it is necessary to establish to obtain an order for surrender under s. 16(1) of the Act of 2003, before going on to raise two specific objections to surrender.
14. Mr McDermott's first specific objection is that the TCA warrant and additional information contain insufficient information to demonstrate that there is a stateable allegation against him in respect of the criminal damage allegation. Mr McDermott in effect submits that, contrary to the requirement under s. 11(1A)(f) of the Act of 2003, the warrant fails to specify the circumstances in which that offence is alleged to have been committed and, more specifically, that it fails to specify the alleged degree of involvement of Mr McDermott in it ('the s. 11 objection').
15. Mr McDermott's second specific objection is that his surrender for the prosecution of the first offence would be 'potentially' in breach of s. 42 of the Act of 2003, which permits the refusal of surrender where the requested person is being prosecuted in the State for an offence consisting of an act or omission of which the offence in the warrant consists in whole or in part, in that the alleged offence is capable of being tried in this jurisdiction under s. 2 of the Criminal Law (Jurisdiction) Act 1976 and the Director of Public Prosecutions has not indicated whether any such prosecution against Mr McDermott is currently being considered ('the s. 42 objection').
16. I will deal with each of those objections in turn.

### **The s. 11 objection**

17. This objection relates solely to the criminal damage offence.
18. Under s. 11(1A)(f) of the Act of 2003, which is closely mirrored by Article 606(1)(e) of the Trade and Co-operation Agreement ('TCA'), a TCA warrant must specify the circumstances in which the offence is alleged to have been committed, including the time and place of its alleged commission and the alleged degree of involvement of the requested person in it. Under s. 20 of the Act of 2003, which is closely mirrored by Article 613(2) of the TCA, the executing judicial authority is empowered to require the

provision of additional information where it is of the opinion that the information provided in the TCA warrant is insufficient to enable it to render a decision.

19. The requested person submits that the information provided about the alleged offence of criminal damage is insufficient to meet the requirements of s. 11(1A)(f) of the Act of 2003. As Edwards J summarised the position in *Minister for Justice and Equality v Cahill* [2012] IEHC 315, those requirements serve three broad objectives: first, to enable the executing judicial authority to determine whether it is appropriate to endorse a warrant for execution within the State; second, to enable the executing judicial authority to determine whether the requirements of correspondence – that is to say, of dual, or double, criminality – are met; and third, to enable the requested person to know precisely what acts are in issue, in order to identify any lawful objection to surrender there may be on any other ground, such as breach of the rule of specialty, of the *ne bis in idem* principle, or of the requirements of territoriality.
20. In this instance, the substance of the objection appears to be that the information provided is insufficient to meet the requirements of s. 11(1A)(f) of the Act of 2003 because it is insufficient to enable the court to determine whether the offence corresponds with an offence under the law of the State and, thus, whether surrender should be refused under s. 38(1A) of the Act of 2003.
21. Under s. 5 of the Act of 2003, an offence specified in a TCA warrant corresponds to an offence under the law of the State for the purposes of the Act, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the TCA warrant issued, constitute an offence under the law of the State.
22. It is important to emphasise that, contrary to the submission made on behalf of Mr McDermott in the course of oral argument, there is no requirement under the Act of 2003 or the TCA for the requesting state to establish a *prima facie* case in the sense of a requirement to produce the evidence necessary to meet an evidential threshold. As Donnelly J explained in *Minister for Justice v Sadiku* [2016] IEHC 502 (at para. 45), “there is no necessity to set out the evidence upon which the requested person’s culpability is determined or indeed to set out minute details of the offence. What is important is that sufficient information is given to enable the respondent and the court to consider all relevant matters”.
23. It is also important to note that, in addressing the issue of correspondence, it is appropriate to read the warrant as a whole (per Denham J for the Supreme Court in *Minister for Justice, Equality and Law Reform v Dolny*, [2009] IESC 48 (at para. 14)). As the scheme of the Act of 2003 makes clear, that requirement extends to a consideration of all additional documentation or information provided in response to a request made under s. 20 of the Act.
24. Mr McDermott contends that information provided ‘is insufficient to clear the low hurdle required to show participation in a joint enterprise’. In advancing that submission, Mr McDermott relies on the proposition, described by Geoghegan J for the former Court of

Criminal Appeal in *The People (DPP) v Jordan* [2006] 3 I.R. 425 (at 428) as trite law, that a person cannot be convicted of an offence by merely being present when it is committed – there must be some evidence either of common design or of aiding or abetting in the offence.

25. The gravamen of Mr McDermott's submission appears to be that, on the basis of the information provided, there is nothing to suggest that Mr McDermott was more than merely present when the offence of criminal damage was committed. I cannot accept that argument.
26. As the information provided makes clear, the relevant allegation in this case is one of joint enterprise, or common design, rather than one of abetting a crime by encouraging its commission. In *Jordan*, Geoghegan J emphasised that the encouragement necessary to establish secondary participation need not be express but could be inferred from the circumstances as a whole (at 428). Similarly, the existence of an agreement to engage in a joint enterprise, whether tacit or express, can be inferred from all the relevant circumstances.
27. In this case, the information available to the court goes far beyond the assertion that Mr McDermott was merely present when criminal damage was caused to the Volkswagen car that Mr Mitchell was driving. It is alleged that the criminal damage to the car occurred in the broader context of a physical assault upon Mr Mitchell by Mr McDermott and another person, during which Mr McDermott struck Mr Mitchell multiple times with an iron bar and attempted to drag Mr Mitchell out of that car. It cannot be said that on such facts, if proved, a joint enterprise to commit an offence of criminal damage to the motor vehicle could not be inferred.
28. For that reason, I reject the argument that the information provided about the alleged offence of criminal damage is insufficient to meet the requirements of s. 11(1A)(f) of the Act of 2003.

### **Correspondence**

29. Given the inquisitorial nature of this proceeding and the obligation upon the court under s. 16(1)(e) to be satisfied that surrender is not liable to be refused under s. 38(1A) in Part 3 of the Act of 2003, it is nonetheless necessary to determine whether each of the two offences specified in the TCA warrant corresponds to an offence under the law of the State.
30. The Minister submits, and I accept, that, under the laws of the State, the acts alleged to constitute the assault offence would, if committed in the State on the date on which the TCA warrant issued, constitute the offence of assault causing harm, contrary to s. 3 of the Non-Fatal Offences Against the Person Act 1997, and the acts alleged to constitute the criminal damage offence would, if committed in the State on the date on which the TCA warrant issued, constitute the offence of criminal damage contrary to s. 2 of the Criminal Damage Act 1991.

31. For those reasons, I conclude that the surrender of Mr McDermott may not be refused for either of the offences for which it is sought on the ground of lack of correspondence under s. 38(1A) of the Act of 2003.

**The s. 42 objection**

32. Section 42 of the Act of 2003 permits surrender to be refused where the requested person is being prosecuted in the State for an offence consisting of an act or omission of which the offence specified in the relevant arrest warrant issued in respect of him consists in whole or in part.

33. Mr McDermott points to s. 2(1) of the Criminal Law (Jurisdiction) Act 1976, which provides that where a person does in Northern Ireland an act that, if done in the State would constitute an offence specified in the schedule to that Act he shall be guilty of an offence and shall be liable on conviction on indictment to the penalty to which he would have been liable if he had done the act in the State.

34. Mr McDermott submits that the offence of wounding with intent to cause grievous bodily harm, contrary to s. 18 of the Offences Against the Person Act 1861, and that of causing grievous bodily harm, contrary to s. 20 of that Act, are each specified in paragraph 7 of the schedule to the 1976 Act. However, as the Minister points out, that schedule was amended by s. 26 of the Non-Fatal Offences Against the Person Act 1997, which substituted a new paragraph 7 of the schedule, which specifies instead the offence of assault causing serious harm, contrary to s. 4 of the 1997 Act, and the offence of false imprisonment, contrary to s. 15 of that Act.

35. In reliance on the erroneous understanding just described, Mr McDermott goes on to argue that there is 'a possibility' that Mr McDermott will be prosecuted in the State for an offence under s. 18 or s. 20 of the 1861 Act arising out of the relevant acts of which the assault offence in the TCA warrant consists, and that the inquisitorial nature of these proceedings requires the court to rule out that possibility before making an order for surrender.

36. I do not accept that argument. As the Minister submits, s. 42 permits the refusal of surrender where the requested person is being prosecuted in the State, not where the prosecution of the requested person in the State is simply a theoretical possibility. There is no evidence before me that Mr McDermott is being prosecuted in the State for any of the acts alleged. If such a prosecution was in train, no one would be better placed to adduce the relevant evidence than Mr McDermott.

**The TCA warrant - necessary proofs under s. 16(1) of the Act of 2003**

37. On the information and evidence before me, I am duly satisfied that:

- (a) the person before the court is the person in respect of whom the TCA warrant issued (upon which issue no dispute has been raised),
- (b) the TCA warrant, or a true copy thereof, has been endorsed in accordance with s. 13 for the execution of that warrant,
- (c) the TCA warrant makes clear that the matters required by s. 45 of the Act of 2003 do not arise as this is a prosecution, rather than conviction, case.
- (d) I am not required under s. 22, 23 or 24 of the Act of 2003 to refuse to surrender Mr McDermott under that Act (as none of the matters referred to in those sections arise), and,
- (e) the surrender of Mr McDermott is not prohibited under any of the provisions of Part 3 of the Act of 2003. For the reasons stated, I have rejected Mr McDermott's argument that surrender is prohibited under s. 11 of the Act and I am satisfied that each of the offences for which his surrender is sought corresponds to an offence under the law of the State and that each offence is punishable by imprisonment for a maximum period of not less than 12 months (being a maximum period of life imprisonment and 14 years imprisonment, respectively), so that his surrender is not prohibited under s. 38(1)(a)(i) of the Act. I have also rejected Mr McDermott's argument that surrender may be refused under s. 42 of the Act. None of the other matters referred to in Part 3 of the Act of 2003 arises.

**Conclusion**

38. It follows that, having due regard to the obligation to surrender under s. 10 of the Act of 2003, I will make an order under s. 16(1) of that Act directing the surrender of Mr McDermott to such person as is duly authorised by the United Kingdom to receive him.