

**THE SUPREME COURT**

**[Record No: 2006/399]**

**Denham J.  
Hardiman J.  
Finnegan J.**

**Between/**

**The Minister for Justice, Equality and Law Reform**

**Applicant/Respondent**

**and**

**Martin Stafford**

**Respondent/Appellant**

**Judgment delivered the 17<sup>th</sup> day of December, 2009 by Denham J.**

1. This is an appeal by Martin Stafford, the respondent/appellant, referred to in this judgment as “the appellant”, from the order of the High Court (Peart J.) made on the 14<sup>th</sup> day of February, 2006, pursuant to s.16(1) of the European Arrest Warrant Act, 2003, as amended, referred to in this judgment as “the Act of 2003”, directing his surrender to such person as is duly authorised by the United Kingdom, on foot of a European arrest warrant.

2. The appellant has raised essentially three issues. First, that a heading in the European arrest warrant is defective and that as a consequence, or in conjunction with other matters, the warrant is invalid. Secondly, there is insufficient evidence on the warrants to show that the alleged offences arise. Thirdly, there is insufficient evidence linking the appellant to the alleged offences. I shall consider each of these issues in this judgment.

### **The High Court**

3. The learned trial judge, having referred to details set out in the warrant relating to charges of kidnapping, false imprisonment, murder, rape, unlawful wounding and sexual touching held:-

“I am of the view that the submission made by Mr O’Higgins fails to take adequate account of the principle of mutual recognition referred to in the Framework Decision. What is required to be included in paragraph (e) of the warrant, according to the specimen form of warrant annexed to the Framework Decision is a description of the circumstances in which the offences were committed, and this description should include details such as time, place and degree of participation by the requested person. The requesting judicial authority has stated in the warrant that the Crown Prosecution Service has decided to charge the respondent and to try him for these offences. The principle of mutual recognition must be interpreted in a way which precludes this Court, except in the most obvious and glaring inadequacy and failure to make any link between the person named in the warrant and the alleged offence, from seeking to go behind the description contained in paragraph (e) and in so doing questioning the bona fides of the warrant signed as it is by the issuing judge.

...

The requirement that the warrant contains a description of the degree of the respondent's involvement in the offences means just that – a description thereof. There is no requirement that a particular level of involvement be described in the sense of having to pass a certain threshold of involvement so as to show anything like a prima facie case. That would be to require a strength of argument demonstration. In my view the principle of mutual co-operation is consistent with the requesting authority being expected to show a degree of participation or involvement by the respondent in the offences set forth in the warrant. Beyond that it is a matter for the requesting authority, who in this case has stated that it has been decided to charge and try the respondent with the charges, to prove its case at trial beyond a reasonable doubt so as to dislodge the presumption of innocence which he presently enjoys as of right. To go further in my view and expect that the requesting authority should at this stage be required to set forth all of its proposed evidence in more detail is not something required by either the letter or the spirit of the Framework Decision.

The detail contained in the narrative to the effect that the respondent has been identified as being the driver in the missing person's car on the morning of the 5<sup>th</sup> December 2004, combined with the fact that the semen which has a DNA match to the DNA of the respondent, as well as finding blood in the car, and the alleged conversation with Ms. Mohan on the way to Dublin is more than enough by way of degree of involvement in the alleged offences numbered 2 to 6 in the warrant in order to satisfy the requirement contained in the form of warrant provided for in the Framework Decision.”

The learned High Court judge concluded by directing the surrender of the appellant.

### **Notice of Appeal**

4. By Notice of Appeal the appellant has appealed to this Court. The essence of the appeal is the issue as to whether the warrant contains information which is required by the Act of 2003.

5. The grounds of appeal relevant to the issue are as follows:-

“(a). The learned Judge, erred in fact and in law in:

- (i) Failing to find that the facts set out in the warrant did not disclose the commission of the offences charged, or any of them.
- (ii) That a finding that the offences numbered 2 to 6 in the warrant had been committed by someone was a pre-requisite to a finding that the detail contained in the warrant was

sufficient to specify the degree of involvement or alleged degree of involvement of the Appellant in the commission of the offences.

- (b) The learned Judge erred in his interpretation of section 11(1A)(f) of the European Arrest Warrant Act as amended by section 72 of the Criminal Justice (Terrorist Offences) Act 2005.
- (c) The learned Judge erred in finding that the European Arrest Warrant was in the form required by section 11(1A)(f) of the European Arrest Warrant Act 2003 as amended by section 72 of the Criminal Justice (Terrorist Offences) Act 2005 and in particular erred in finding that there was sufficient detail contained in the warrant to show the time, place and degree of participation/involvement alleged.
- (d) Further or in the alternative the learned Judge erred in finding that the European Arrest Warrant was in the form required by the Annex to the European Arrest Warrant Act 2003 (at page 88 of Act).
- (e) The learned Judge erred in law in finding that the warrant transmitted to this State by the U.K. authority must be looked at in the context of the Preamble of the Framework decision.
- (f) The learned Judge erred in law in finding that the submissions by Counsel for the Appellant failed to take account of the principle of mutual recognition referred to in the Framework Decision.
- (g) The learned Judge erred in law in finding that the principle of mutual recognition must be interpreted in a way which precludes the Court (except in circumstances of the most glaring inadequacy and failure to make any link between the person named in the warrant and the alleged offence) from seeking to go behind the description contained in paragraph (e) and in so doing questioning the bona fides of the warrant signed as it is by the issuing Judge.
- (h) The learned Judge erred in finding that the principle of mutual cooperation is consistent with the requesting authority being expected to show a degree of participation or involvement by the Appellant in the offences set out in the warrant.
- (i) The learned Judge erred in finding that the detail contained in the narrative (to the effect that the Appellant had been identified as being the driver in the missing person's car on the morning of the 5<sup>th</sup> December 2004, combined with the fact that the semen which has a DNA match to the DNA of the Appellant, as well as the finding of blood in the car, and the alleged conversation with Ms. Mohan on the way to Dublin) is more than enough by way of degree of involvement in the alleged offences numbered 2 to 6 in

the warrant in order to satisfy the requirement contained in the form of warrant provided for in the Framework Decision.

- (j) The Court erred in failing to require the issuing judicial authority to provide it with appropriate additional documentation or information pursuant to section 20(1) of the 2003 Act.

...

- (m) The learned Judge erred in law in failing to interpret the statute in a manner favourable to the Appellant herein against whom the statute was invoked in the proceedings.”

### **Submissions**

6. Counsel for the appellant confirmed that there was no appeal in relation to Count No.1 on the European arrest warrant, i.e. the unlawful wounding offence. The appeal was advanced in relation to Counts No. 2 - 6.

7. It was submitted that the material on the warrants does not support a finding that the offences have been committed. Alternatively, if the European arrest warrant does disclose that the offences were committed, it was submitted that the information is insufficient to show that the appellant “participated”. Counsel confirmed that he was not making the case that there is a requirement to show a *prima facie* case.

However, he submitted that the warrant must have material which indicates that the appellant participated. He argued that if deficiencies are established that it is not an answer to rely upon the Comity of Nations or the doctrine of mutual recognition.

These principles are not in conflict, it was submitted, with the obligation to show that the offences were committed and that the appellant participated. Counsel submitted that it was a statutory matter and that the question was whether the material in the European arrest warrant complied with the statute.

8. Counsel for the Minister for Justice, Equality and Law Reform, referred to in this judgment as “the Minister”, submitted that this was a “dressed up strength case”. Reference was made to the Framework Decision and to the requirement to describe

the circumstances. Counsel referred to the circumstances of this case and submitted that the warrant gave a description of a murder for which no body has been found. One could not say there would never be a “circumstantial evidence” case in a European arrest warrant. It was submitted that there is an appropriate description of the circumstances in which the alleged offences were committed. Reference was made to the learned High Court judge’s reference to “obvious and glaring inadequacy” and it was argued that this case is far from that situation. This, it was submitted, is a case based upon circumstantial evidence and that of itself is not a reason to refuse a request for surrender. It was submitted that in this case there was a clear set of circumstances where a person has disappeared in suspicious circumstances and there is an evidential link to the appellant.

### **Framework Decision**

9. The Council Framework Decision of the 13<sup>th</sup> June, 2002, on the European arrest warrant and the surrender procedures between Member States, is referred to in this judgment as “the Framework Decision”. Article 8 provides:-

“Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:
  - (a) the identity and nationality of the requested person;
  - (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
  - (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
  - (d) the nature and legal classification of the offence, particularly in respect of Article 2;
  - (e) 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;
  - (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
  - (g) if possible, other consequences of the offence.”

[Emphasis added]

10. The European arrest warrant form in the annex to the Framework Decision states, in the relevant portion, as follows:-

“Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:”

**Statute law**

11. The Act of 2003 makes provision for the form and content of a European arrest warrant as to the circumstances of the offence or alleged offence. Section 11(1), as amended by s.72 of the Criminal Justice (Terrorist Offences) Act 2005, provides that:-

“A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision.”

Section (1A) provides that:-

“Subject to subsection (2A), a European arrest warrant shall specify –  
...

(f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, ...”

Section 2A provided:-

“If it is not practicable for any of the information to which subsection (1A) (inserted by *section 72(a)* of the *Criminal Justice (Terrorist Offences) Act 2005*) applies to be specified in the European arrest warrant, it may be specified in a separate document.”

In fact section 2A has been amended under Part 2 of the Criminal Justice (Miscellaneous Provisions) Act 2009, which came into operation on the 25<sup>th</sup> day of August, 2009. However, the amendment of 2009 does not apply to this appeal.

## **Decision**

### **Heading on Warrant**

12. First, the technical point as to the heading in the warrant. The heading in the warrant states:-

“Description of the circumstances in which the offence(s) was (were) committed, including the time and place they were committed by the requested person:”

It does not include the words “degree of participation/degree of involvement”.

I am satisfied that while it would be better practice if such words were in the title it is not a matter which nullifies the warrant. It is for the court to consider the facts on the warrant to determine whether they meet the requirements of the Act of 2003. The omission of these words on the heading in the warrant is not a flaw which goes to the validity of the warrant. Consequently, I would dismiss this ground of appeal

### **Offences**

13. Secondly, Counsel submitted that the material on the warrants does not support a finding that offences were committed. In relation to this submission it is necessary to consider the facts stated in the European arrest warrant. It contains the following information:-

#### **“Statement**

I am satisfied that a Crown Prosecutor in the Crown Prosecution Service, whose function is to decide whether or not to prosecute an individual for the alleged commission of a criminal offence, has decided to charge the person named herein and to try him for the offences specified above and for which this warrant is issued.

Description of the circumstances in which the offence(s) was (were) committed, including the time and place they were committed by the requested person.

At the time of Alleged Offence 1, Martin STAFFORD [“Mr STAFFORD”] and David Lee Goodall [“Mr Goodall”] were living in Parker House Hostel, 25 Parker Street, London WC2. This is a hostel for the homeless.



On 25 July 2004 at about 2.30 am Mr Goodall was trying to sleep when he heard banging on his door. He told the person banging that he was trying to sleep and to leave. The banging continued so he got up and answered the door. On opening it he saw a male he knew by the name of Martin ["Mr STAFFORD"]. Mr STAFFORD pushed past Mr Goodall into the room and shut the door behind him. He threatened Mr Goodall. Mr STAFFORD told Mr Goodall to take off his gold ring and give it to him. He also pointed at a number of other things including the television. Mr STAFFORD pulled out a knife and said if Mr Goodall didn't give it to him he would get his brothers and the IRA on to him. Mr STAFFORD then unzipped his ["Mr STAFFORD's"] trousers and pulled out his penis. Mr STAFFORD then urinated in a cup. Mr STAFFORD said "Suck my cock". Mr Goodall refused, and Mr STAFFORD lunged at him with the knife. Mr Goodall grabbed the knife but sustained a badly cut right hand.

Members of the staff came. Mr Gary Smith, an assistant manager at the hostel, knocked on the door, which was opened by Mr STAFFORD, who said nothing was going on. Mr Smith saw Mr Goodall mouthing the words, "Help me, help me." Mr STAFFORD said the injury to Mr Goodall's hand was an accident. He then slammed the door. Mr Smith heard Mr STAFFORD say, "If you grass me up for this I'm going to kill you, I mean that." The door was then unlocked by Mr STAFFORD, and Mr Smith and a colleague managed to get Mr STAFFORD out.

Mr Goodall received a 5" curved full thickness cut between the right thumb and the index finger. He required stitches.

The knife was recovered by Mr Smith from under a car in Parker Street. Another resident had seen Mr STAFFORD throw the knife out.

Police Constables Stuart Robinson and Ek attended at about 3.30 am. Mr STAFFORD was arrested.

On the same day he was interviewed at Holborn Police Station in the presence of a solicitor and an appropriate adult.

Mr STAFFORD said he had been given a cup of coffee and a 'spliff' by Mr Goodall and that he then felt strange. (He implied he had been drugged in some way by Mr Goodall.) He stated he went into Mr Goodall's room and asked him what he had given him. He remembers the next things that happened was Mr Goodall's hand being placed on his leg and moving towards his penis. Mr STAFFORD stated he then pushed Mr Goodall away from him. Mr Goodall then got up and looked at a knife that was on a table. Mr STAFFORD believed he was about to reach for it and so grabbed it himself. As he did so, Mr Goodall grabbed the blade and, in the struggle that followed, Mr Goodall slashed his hands on the blade. Mr STAFFORD says it was an accident and denied he made any homosexual demands. He denied asking for property or urinating in a cup.

On 25 July 2004 Mr STAFFORD was charged with unlawful wounding.

Alleged Offences 2 to 6

Michelle GUNSHON was born on 19 June 1966. She had separated from her husband Derek and has three children aged 23, 21 and 15. Until recently her 15 year old son was living with his father, Derek, but because of Derek's alcoholism she arranged for her son to come and live with her and her new partner Ian POMFREY. She worked for a security company and at the time of her disappearance was working in Birmingham providing security for the "Clothes Show Live". She is not considered by those who know her to leave them without making contact with them.

On 3 December 2004 Michelle GUNSHON travelled from London to Birmingham with two colleagues, Richard FINNEY and Michael KEEGAN. They were all working at the National Exhibition Centre in Birmingham for the "Clothes Show Live". They all stayed at The Dubliner Public House, High Street, Digbeth, Birmingham. Michelle stayed in Room 2, Flat 2. FINNEY and KEEGAN stayed in Room 2, Flat 3.

On 4 December, 2004 Michelle, FINNEY and KEEGAN finished work at about 18.30 hours and returned to The Dubliner at 19.15 hours. They had travelled in Michelle's car, a blue Ford Escort registration number H814 KNO. Michelle parked her car in Mill Lane, which is a road between The Dubliner Public House and the main Coach Station in Birmingham. The group had some drinks in the pub but shortly after Michelle went to her room.

Michelle was last seen at 21.30 hours on 4 December 2004 when FINNEY went to her room to borrow some money. At that time she was wearing black trousers, a T-shirt and no footwear. Her partner Ian POMFREY rang her at 22.05 hours and she told him she was tired and was going to sleep.

She was reported missing on 6 December 2004 by Richard FINNEY. Both he and KEEGAN say that they saw Michelle's belongings along with her mobile phone in her room at 15.00 hours. They noted that the phone had 27 missed calls displayed. By 17.00 hours her belongings had been removed.

CCTV footage was recovered from around the area and this shows Michelle GUNSHON's car being driven from Mill Lane where she parked it at 07.15 hours on 5 December 2004. It shows one person approaching the car and getting into it. It is not possible to determine whether the person is male or female.

Michelle's car activated 2 speed cameras on two roads between 08.29 and 09.08 hours on 5 December coming into the city centre. The two photographs recovered show a white male as the driver. They have been

enlarged and the second photograph appears to show a person sat in the front passenger seat. The licensee of The Dubliner has viewed these photographs and has identified the driver as Mr STAFFORD.

Ian POMFREY was contacted and stated that Michelle had a mobile phone charger in her car so she would be able to charge her phone. Michelle was supposed to be working in Birmingham until 8 December 2004. She did not turn up to work on 5 December or the remaining days and left her colleagues without transportation back to London. She has not been seen since.

A message was left on her phone by the police asking her to contact them. Family members, work colleagues and friends were all contacted and no one had had any contact. The Dubliner has CCTV but it does not record. Checks were completed at her estranged husband's address and her partner Ian POMFREY's address and a vehicle and person check was completed, all with negative result.

On 7 December 2004 Michelle GUNSHON's car was found on a street near to The Dubliner. On examination blood was recovered from a jacket in the boot, blood was also recovered from the front drivers door frame and from the steering wheel. This is Michelle's blood. Semen was also recovered and this matches a profile held on the DNA database for Martin STAFFORD.

Martin STAFFORD had been staying at The Dubliner in Room 5, Flat 3 and had stayed at the Pub from time to time under a loose agreement with the landlord Paddy Finn, whereby he would walk the family dog and collect glasses in return for free accommodation. He did not stay at The Dubliner from Sunday 5 December 2004 to Wednesday 8 December 2004. On 8 December he was seen by a witness, Sheila MOHAN, at the main coach station where they both travelled to Dublin via Holyhead. Mr STAFFORD told Sheila MOHAN not to tell anyone that she had seen him.

On 23 February 2005 a further search was carried out for evidence, and property belonging to Michelle GUNSHON was recovered on a small piece of waste land next to The Dubliner Public House. This included her wallet and bank cards, a bag of men's clothing, a tube of mascara, a T mobile telecommunications paperwork and two kitchen knives with a serrated edge.

Although Michelle Gunshon's body has not been found, the circumstantial evidence is such to render the commission of her murder certain and leave no ground for reasonable doubt."

14. Article 8 of the Framework Decision and section 11(1)(f) of the Act of 2003, as amended by s.72 of the Criminal Justice (Terrorist Offences) Act 2005, require that there be a description of the circumstances in which the offences or alleged offences

were committed. The matter of time and place are important as they are central to issues such as the statutes of limitation and jurisdiction.

15. It is required that there be a description of the acts upon which the warrant is based. This is similar to the situation under the Extradition Act 1965, as amended, and indeed classically in extradition law. A description of the acts, or the acts alleged, are the facts upon which the executing judicial authority may apply the law. By describing the acts the facts are before the court and so a decision may be made as to whether there is, for example, double criminality. I am satisfied that the facts on the warrant in this case are sufficient to describe the circumstances in which alleged offences were committed.

### **Participation**

16. The next issue is the submission that the information is insufficient to show that the appellant “participated”.

17. The Framework Decision, in Article 8, in describing the content and form of the European arrest warrant states in (1)(e) “... and degree of participation in the offence by the requested person”. The European arrest warrant form in the annex to the Framework Decision states: “... and degree of participation in the offence(s) by the requested person”. The Act of 2003, as amended by s.72 of the Criminal Justice (Terrorist Offences) Act 2005, requires in s.11(1A)(f) “... and the degree of involvement or alleged degree of involvement of the person in the commission of the offence...”. It is these words which fall to be considered in this case.

18. While the Framework Decision uses the word “participation” and the Act of 2003 uses the word “involvement”, I am satisfied that no issue arises on the use of different terms. Both mean to take part in, to participate in, to be involved in. There is no significance in the use of the different words.

19. The question which arises for determination is whether the acts alleged on the warrant show a link with the requested person. It is not necessary to show a *prima facie* case. It is not necessary to show a “strong” case. The issue of guilt or innocence is for the jury in the requesting state.

20. This case is one of circumstantial evidence. There is no reason why an accusation of a crime based upon circumstantial evidence could not be the basis for a European arrest warrant. It is necessary to look at the facts alleged in each warrant.

21. In this case the facts alleged include a missing woman, missing since the evening of 4<sup>th</sup> December, 2004, no body found, her belongings seen in her hotel room, with 27 missed calls on her mobile, at 3 pm on the 6<sup>th</sup> December, 2004, and then a few hours later her belongings missing, her car removed from where she parked it, road camera shots taken of the car on the 5<sup>th</sup> December, 2004 with the appellant identified by a witness as the driver, on the 7<sup>th</sup> December, 2004 her car was found, the missing woman’s blood was found in her car, semen was found in the car which matches a profile on the DNA database of the appellant’s DNA, on the 8<sup>th</sup> December, 2004, the appellant was seen travelling to Dublin and he told a witness not to tell anyone she had seen him.

22. I am satisfied that there are sufficient facts stated on the European arrest warrant to indicate an alleged participation, or alleged involvement, by the appellant with the offences for which he is charged in the requesting state. It is not for this Court to consider the strength of the prosecution case against the appellant.

23. The European Arrest Warrant Scheme, based on the Framework Decision and applied in each Member State under the relevant national law, is founded on the concept of mutual respect and judicial cooperation between the Member States of the European Union. It is a development of the concept of the Comity of Nations to a closer working relationship between the judicial authorities of the EU in the area of

the European arrest warrant. However, each request and European arrest warrant process is a matter for determination by the courts.

24. There is no reason in this case, in light of the facts described on the European arrest warrant, not to apply the appropriate mutual recognition and judicial cooperation. There is sufficient detail described on the warrant to show the alleged participation, the alleged involvement, of the appellant in order to satisfy the requirements of the Act of 2003.

25. Of course the appellant would be surrendered for the purpose of prosecution, not investigations.

26. For the reasons given I would dismiss the appeal and uphold the order of the High Court.