

**Neutral Citation Number: [2016] EWHC 3525 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**THE ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Friday, 9 December 2016

**B e f o r e:**

**MR JUSTICE COLLINS**

**Between:**  
**JEDINAK**

**Appellant**

v

**DISTRICT COURT IN PARDUBICE (CZECH REPUBLIC)**

**Respondent**

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**Mr D Williams** (instructed by Freemans) appeared on behalf of the **Appellant**  
**Ms J Farrant** (instructed by CPS Extradition Unit) appeared on behalf of the **Respondent**

J U D G M E N T  
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MR JUSTICE COLLINS:

1. This is an appeal against the decision of District Judge Ikram given, eventually, at the end of June 2016, whereby he directed that the appellant be extradited to the Czech Republic on an accusation warrant.
2. The offence in the warrant which is in issue involves essentially the obtaining of goods by deception but the goods were and all the deception took place in the Slovak Republic. It may be of some significance that until 1993 both countries were one as Czechoslovakia, and it may be that laws there on each do cater for, as it were, inter-State prosecutions. However, that is by the way.
3. It is important as a starting point to see what the European Arrest Warrant alleged as the offending for which extradition was sought.
4. The offence in question, said to be an offence of fraud, was described so far as material in these words:

"He acted with a preconceived intention not to pay for the goods, timber, he had obtained as a person acting on behalf of [the named individual who in fact was his partner, although they were living apart] without her consent and knowledge"

He alleged that she was one carrying on business which consisted of the provision of services in forest management and hunting.

5. On three dates in July 2007, it carries on:

"On the basis of an oral agreement entered into with a Mr Taragel [who is identified] purchased timber [in the total volume given and its value] which he took over in a warehouse in the Slovak Republic. As a result, the supplier issued invoices and documents evidencing the origin of the timber. All the above mentioned documents were issued for the customer [the customer being the, as was believed, the appellant's partner]. The appellant subsequently sold a part of the timber [in the volume given to an identified company] which paid an amount to him on the basis of advance payments made in October 2007, November and December.

The appellant used the remaining part of the timber in an unascertained manner, despite he had received a payment for a part of the goods purchased from the supplier. However, he failed to use the funds he had

obtained to settle his obligations towards the supplier and he used them for his own needs thus causing damage totalling a substantial sum and it was said that he had thereby committed an offence of fraud."

6. It is apparent from that description that no part of the offending was carried out in the Czech Republic but he was a citizen of the Czech Republic, he lived there, and he received the benefit in respect of the money and the ability to dispose of the timber and had received payment for it in the Czech Republic.

7. The warrant goes on, so far as material:

"Both as regards to the offence committed in the Slovak Republic in 2007, an investigation of pre-trial proceedings were also conducted in this matter in Slovakia, during which a number of actions were carried out by means of request for legal assistance including in the Czech Republic.

"On 14 November 2009, resolution to commence the prosecution of the appellant was issued. He was then questioned as the accused within the proceedings, in January 2012, and expressly stated that he wanted to be present at the inspection of the file after the investigation was closed. Although he informed of the address in which he should be staying, the police of the Slovak Republic in co-operation with the police of the Czech Republic was unable to serve on the accused the summons for the inspection of the file which was scheduled for a specific date.

In view of this, it was decided that the entire case would be handed over to the Czech Republic through the Attorney's General Office for the Czech Republic."

8. I assume from that that the original investigation was carried out in the Slovak Republic because presumably it was considered that any proceedings would be taken there, but when he was not able to be located because he was a citizen of the Czech Republic it was decided that the matter would be handed over to the Czech Republic.

9. It must follow from that, that the law of the Czech Republic gave jurisdiction to the courts in the Czech Republic to deal with him notwithstanding that the offending in question had taken place in the Slovak Republic.

10. The result of that is that Section 64 of the Extradition Act applies and that provides so far as material as follows, dealing with what needs to be established in order to give jurisdiction in this country:-

"64 Extradition offences: person not sentenced for offence

(1) This section applies in relation to conduct of a person if —

(a) he is accused in a category 1 territory of the commission of an offence constituted by the conduct, .....

(2) The conduct constitutes an extradition offence in relation to the category 1 territory if these conditions [in sub-section 3, 4 or 5] are satisfied—

(a) the conduct occurs in the category 1 territory and no part of it occurs in the United Kingdom;

(b) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;

(c) the certificate shows that the conduct is punishable under the law of the Category 1 territory with imprisonment or another form of detention for a term of 3 years or a greater punishment."

11. I need not refer to (3) or(5), but (4) provides that:

"(4)The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied —

(a) the conduct occurs outside the category 1 territory;

(b) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);

(c) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment."

12. The issue therefore is, in this case, whether the conduct which is set out in the EAW, and to which I have already referred, would constitute an extra-territorial offence under the law of the United Kingdom (or relevant part of the United Kingdom, in this case, England) in corresponding circumstances.

13. Essentially, the allegation here would, if it was a purely domestic offence in this country amount to obtaining by deception (or fraud, in a more general sense) because the victim was induced to sell the timber in the belief that the appellant was authorised by the named person, his partner, who held a particular status and, equally obviously, that the victim would be paid for the timber which was sold.
14. But what was submitted here, and the District Judge accepted, was that this was or could be regarded as an offence under the Proceeds of Crime Act 2002, and accordingly in the circumstances there being extra-territorial effect to the material offence which could have been charged under those provisions the conditions of Section 64(4) are met.
15. The authority that is said to support that approach is a case in the Court of Appeal Criminal Division R v Rogers [2015] 1 WLR 1017. The material facts of that case were that the defendant was involved in two frauds in which members of the public in the United Kingdom were persuaded to pay money into bank accounts in this country on the basis of false promises. They believed that the bank accounts were genuine UK accounts, whereas in fact what was behind the fraud was that the money was to be taken (and indeed was taken) to accounts in Spain and it was the accounts in Spain which the appellant, Rogers, was managing. There were others clearly involved in the fraud but his role appears to have been to act as the chief villain's 'man' in Spain.
16. It is obvious from the facts of that case that there was an element of the offending, on the face of it, within this country, in that the victims were nationals of this country and albeit it was a bogus account (in the sense that it was used only for the payment of expenses) there was an account in this country.
17. The charge which had relevance so far as that case was concerned was money laundering contrary to section 327 of the Proceeds of Crime Act 2002.
18. There had originally been a charge pursuant to section 327(1)(e) that he had removed criminal property from this country. But he had not himself been removing property and so that was decided by the trial judge not to be possible as a charge and there was an amendment which charged him under section 327(1)(c) which made criminal the conversion of criminal property and that offence he had, it was decided, committed.
19. But the question was whether that offence had extra-territorial effect. The court dealt with that in paragraphs 31 to 48, essentially, of the judgment. I do not need to and it would be quite unnecessary to go into all that reasoning. Suffice it to say that it is material to consider various other provisions in the Proceeds of Crime Act.
20. Section 340 provides, by sub-section 2:
  - “(2)Criminal conduct is conduct which —
    - (a) constitutes an offence in any part of the United Kingdom, or
    - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
  - (3) Property is criminal property if —
    - (a)it constitutes a person’s benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
    - (b)the alleged offender knows or suspects that it constitutes or represents such a benefit.
  - [...]
  - (9)Property is all property wherever situated and includes —
    - (a) money;
    - (b) all forms of property, real or personal, heritable or moveable;
    - (c) things in action and other intangible or incorporeal property.
  - [...]
  - (11)Money laundering is an act which —
    - (a) constitutes an offence under section 327, 328 or 329.
    - (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a).
    - (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph(a), or
    - (d) would constitute an offence specified in paragraph (a),(b) or (c) if done in the United Kingdom.”

21. The court in Rogers(supra) decided in paragraphs 46 and 47, and 48 as follows:

"46. The definition of criminal property in section 340(3), taken together with the provision in section 340(9) that "Property is all property *wherever* situated ..." is a further indication of the extra-territorial reach intended by Parliament.

47. Moreover, the specific provision at 340(11)(d) that money laundering is an act which would constitute an offence (including one under section 327) if done in the UK, appears to admit of no other construction than that Parliament intended, extra-territorial effect to this legislation.

48. Mr Skelley sought to meet these points by arguing that any extra-territorial effect related only to the criminal property element. However, it seem to us that that this submission is unsustainable given that section 327(2)(a), 340(2) and section 340(11) clearly relate to the conduct element of the offence rather than the criminal property element. When the direct question was put to Mr Skelley as to what alternative construction could he put on section 340(11)(d) he frankly acknowledged that he was unable to suggest one."

22. It was he submitted that the language used fell short of indicating that clear intention by Parliament to confer extra-territorial jurisdiction but the court decided that that intention did apply to the money laundering offence under s.327. The same would apply to 329 because that is specifically also dealt with in section 340(11).

23. The offence under section 329, which is the material one, it is said for the purposes of this case, provides:

"Section 329(1): A person commits an offence if he (a) acquires criminal property, (b) uses criminal property, (c) has possession of criminal property."

24. There are the various defences set out but essentially they relate to his knowledge, and there is clear indication here that he was thoroughly dishonest in all that he did. That certainly is the allegation, although it is fair to say that he denies that he was indeed guilty of any offending.

25. He clearly did acquire and did have possession of criminal property; namely the timber and the proceeds from the sale of timber, both of which amounted to criminal property.

26. The court in Rogers(supra) then went on to consider an alternative basis of liability following the case of R v Treacy [1971] AC 537, as applied by Lord Woolf in giving the judgment in R v Smith (No 2) [1996] 2 Cr. App R.

27. It is clear that that authority and the basis for finding that Rogers was guilty as charged cannot apply in this case because it is necessary that there is some involvement of or some impact of the fraud on individuals in this country or there was at least some element of the offence which was committed in this country.

28. In considering that, the court said this paragraph 55:

"The laundering of the proceeds by Rogers in Spain is directly linked to those acts in the UK by virtue of the fact that a property is criminal property. This is not a case where the conversion of criminal property relates to the mechanics of a fraud which took place in Spain and which impacted on Spanish victims. In those circumstances our courts would not claim jurisdiction but in this case, when a significant part of the criminality underlined the case took place in England, including the continued deprivation of the victims of their monies, there is no reasonable basis for withholding jurisdiction as explained in R v Smith No 4 [2004] QB. This is not an offence in which the Spanish authorities would have an interest."

29. Those observations related to the alternative basis of attempting to found proper jurisdiction to try and convict Rogers, based on R v. Treacy (supra).

30. That is not applicable in the circumstances of this case.

31. Mr Williams submits that it is not possible in Rogers(supra) to divorce the two elements and the court was clearly to an extent motivated by the recognition that some part of the offending (and indeed the damage cause by the offending) impacted on this country and nationals of this country. But it is clear in my judgment that the decision relating to the possible extra-territorial effect of the money laundering offences was independent of that.

32. So much has been decided since by Dingemans J in Sulaiman v the Tribunal de Grand Instance Paris [2016] EWHC 2868 (Admin), a case decided on 15 November, so a very recent decision.

33. That case did in fact involve some element of offending which could properly be said to have had an impact in this country but essentially it was extra-territorial and the question was whether Section 64(4) might have applied. But Rogers(supra) was considered and what Dinglemans J decided in paragraph 18 was that Rogers was an authority binding on him for the proposition that offences of money laundering extended to extra-territorial activities and that the conclusions reached in Rogers to that effect were not *obiter* but constituted binding authority.

34. It is submitted that that should not be followed because if there is to be an extra territorial effect of any offending it is something that ought to be specifically sanctioned by Parliament.
35. The conclusion in *Rogers* was that the sections to which reference was made in the Proceeds of Crime Act did make it clear that there could be an extra-territorial effect. It is to be noted that section 329 of the Proceeds of Crime Act does not distinguish between criminal property that represents the benefit of some other person's crime and that which represents the benefits of a crime which the accused himself has just committed.
36. The result of that is that a thief will be guilty of an offence under section 329(1) because he would have obtained criminal property and the maximum penalty for the offence under section 329 is twice that for theft. It might well be considered strange and wrong that someone could be, in theory, prosecuted for an offence under the Proceeds of Crime Act as well as for theft when all he had done was effectively to commit the offence of theft and thus be liable to a penalty of twice that which he could be given for a theft.
37. That is an issue which has been considered by the courts and advice has been given to prosecutors in a case called R v. Gabriel [2007] 2 Cr App. 139, where this is said:

"There can be no doubt that the money laundering provisions of Proceeds of Crime Act 2002 are draconian. The scope of section 329 is wide. It requires proof of no more *mens rea* than suspicion. The danger is that juries will be tempted to think that it is for the defence to prove innocence rather than for the prosecution to prove guilt. In R v Loizou [2005] EWCA 1579 the prosecutor had set out the factors upon which he can rely and from which it is submitted that the jury could draw proper inference.

In our judgment, it is a sensible practice of the prosecution (as was done in Loizou) either by giving particulars, or at least in opening, to set out the facts upon which it relies and the inferences which it will invite the jury to draw as proof the property was criminal property. Doing so it may well be the prosecution will be able to limit the scope of the criminal conduct alleged."

38. It is to have been noted that section 22 of the Theft Act set up the offence of handling stolen goods which is involved by the dishonest receipt of stolen goods or dishonest undertaking or assisting in the retention, removal, disposal or realisation of stolen goods. The Theft Act provides:

"s.24 Scope of offences relating to stolen goods.

(1)The provisions of this Act relating to goods which have been stolen shall apply whether the stealing occurred in England or Wales or elsewhere, and whether it occurred before or after the commencement of this Act, provided that the stealing (if not an offence under this Act) amounted to an offence where and at the time when the goods were stolen; and references to stolen goods shall be construed accordingly."

39. The Theft Act goes on to make clear that 'stolen' is to be read as "including goods obtained by fraud" and goods extend to money or any other goods.
40. The offence of handling is committed when such handling occurs otherwise than in the course of the stealing and thus the thief cannot be charged with handling. But, in a case such as this, it is to be noted that while the timber was obtained by the fraud (and thus there could not be in this country a charge of handling of the timber) the money obtained from the sale of the timber (because it would not be goods obtained in the course of the stealing) and thus, at least in theory, there would be the possibility of a charge of handling stolen goods, namely the money which had been obtained as a result of the fraud. It is to be noted that Parliament has made it clear in that context that there is extra-territorial effect.
41. The only important distinction between that offence and the proceeds of crime offence by section 329 is that the handling offence cannot be committed by the thief of the goods in question but the same limitation does not apply to the Proceeds of Crime Act offence.
42. It seems to me that the clear provision in section 24 of the Theft Act, which shows that goods dishonestly obtained abroad can found a charge here for handling, indicates that there really is nothing strange in the decision of the court in Rogers(supra) that extends the money laundering offences to include conduct abroad or the relevant obtaining in question abroad.
43. The construction placed upon section 327, as it was in Rogers, extends to s.329(2), because the court depended upon section 340 in reaching its conclusion on extra-territoriality, and s.340 applies equally to s.329.
44. It seems to me in those circumstances that Dingemans J was correct and that there is an offence in this country, namely that contrary to section 329, and possibly two, in so far as the money is concerned section 22 of the Theft Act in relation to handling stolen goods, and that there would be extra-territorial effect.
45. I appreciate that this is not entirely the manner in which the District Judge approached the question. The question I have to determine is whether the decision reached, namely that the provisions of 64(4) were met was correct and for the reasons I have indicated, in my judgment, it clearly was.

46. I should only add that there was before me an application to renew permission to appeal on the Article 8 ground but realistically Mr Williams recognised that that was a weak ground and that the chances of his success on that were to say the least remote. He was right so to recognise and therefore that application was in the end not pursued.

47. Accordingly this appeal is dismissed.