

The case of Lauri Love.

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On February 5, the High Court upheld Lauri Love's appeal against extradition to the US (Love v. US [2018] EWHC 172 (Admin)). His extradition had been ordered by the Home Secretary in November 2016. The case had been sent to her following a decision of District Judge Tempia at Westminster Magistrates' Court (US v. Love [2016] Lloyd's Rep FC 597). Love faced the daunting prospect of a trial (or in fact three trials) in the US and, if convicted, being sentenced for a term thought to be perhaps 10 years. Naturally, Love, his family and girlfriend and supporters are relieved and delighted. US prosecutors will be disappointed. The decision is significant, but exceptional. It is important because it is the first time an argument based on s.83A of the Extradition Act 2003 has been successful in barring an extradition. In coming to its decision the High Court shed light on aspects of the forum bar. As such it has useful value to future cases where the bar is argued.

On the other hand the case turned on its particular facts. The circumstances around and affecting Love were unusual. An invitation by the interested party, Liberty, to the High Court to reconsider the hitherto ineffective nature of the forum bar – in the sense of stopping extraditions – was not taken up. Accordingly, it appears that the extradition-related consequences of the decision will not extend beyond Love's case itself.

The Forum Bar

The forum bar to extradition was inserted into the 2003 Act by the Crime and Courts Act 2013. There was a previous version of the bar, originating in the Police and Justice Act 2006, but it was never brought into force. The forum bar provides that an extradition is barred if it is not in the interests of justice. An extradition is not in the interests of justice if a substantial measure of the relevant activity of the requested person took place in the UK and in consideration of seven separate factors, or "specified matters", the extradition Judge decides that it should not take place. It is in regard to certain of those seven factors that the High Court differed from the District Judge in Love's case.

The seven matters that an extradition Judge must consider when coming to a decision of whether it is not in the interests of justice to extradite the requested person are the place where the loss or harm occurred, the interests of victims, the belief of a prosecutor that the UK is not the most appropriate jurisdiction to prosecute, the availability of evidence, delay, the desire that all prosecutions take place in the same jurisdiction and the requested person's connections with the UK.

The High Court Decision

The High Court began its assessment of the forum bar by noting that its aim is to prevent extradition where offences can fairly and effectively be tried in the UK and that it is not in the interests of justice that the requested person be extradited (at para.22). It held that its role in an appeal of a forum bar decision was simply to decide whether the decision of the District Judge was wrong.

The first point upon which the High Court disagreed with the District Judge was in the assessment of the interest of victims. The District Judge had discounted a suggestion that it was not in the interests of victims that Love be extradited on account of the possibility that there would be no trial at all because of the risk he would not be fit to stand trial. The High Court referred to evidence – including a newly admitted report – that there was a very high risk that Love would not be fit to stand trial on account of a severe deterioration in both his physical and mental state. This included the worsening of his eczema, asthma, gastrointestinal symptoms and palpitations, depression including psychotic symptoms and finally his suicide risk. It held that the interests of victims were not best served by extradition because of the real risk that Love would not stand trial. This view conflicts with the normal assumption that those interests are best met by extradition to the jurisdiction where the victims live and where a trial will necessarily follow.

A second matter in which the High Court parted from the District Judge was the weight to be placed on the absence of a prosecutor's belief as to the UK not being the most appropriate jurisdiction to prosecute. As noted, one of the matters a Judge is to consider is the view of the prosecutor. In Love's case no such view was expressed – either under s.83A or s.83B (which permits a certification by a prosecutor to that effect). The District Judge held that the absence of a view was neutral. The High Court, in contrast, stated that this silence tells in favour of the forum bar (at para.34).

The High Court also placed a different emphasis upon the difficulties and inconvenience attendant to a UK trial of Love. The District Judge had held that whilst there would be substantial inconvenience, a trial was possible. The High Court held she underplayed the weight that should be attached to the view that a trial could realistically take place in the UK.

It was a combination these three matters in the light of Love's connection to the UK that led the High Court to hold that the decision of the District Judge was wrong. Love's nationality, long residence in the UK, girlfriend and studies did not in themselves lead to this conclusion. What was of particular strength, the High Court held, was his connection to his family and home circumstances on account of his medical conditions and the care and treatment they needed. It concluded that the factors against extradition outweighed those in favour sufficiently clearly to result in the forum bar preventing Love's extradition.

The forum bar was not alone in barring Love's extradition. Also operative was the bar found in s.91 requiring discharge if it appears that it would be unjust or oppressive to extradite on account of the requested person's physical or mental condition. The High Court here differed from the District Judge in consideration of the measures taken in the US to prevent Love from committing suicide. The High Court held that those measures would "... themselves likely have a seriously adverse effect on his very vulnerable and unstable mental and physical wellbeing" (at para.115). It also doubted the conclusion that Love could be prevented from committing suicide. Love's appeal was allowed on the ground of oppression as well.

The Future

The future for Love contains the prospect of a trial for offences under the Computer Misuse Act 1990 and perhaps under the Proceeds of Crime Act 2002 and the common law for conspiracy to defraud. Fitzgerald QC for Love had emphasised to the High Court that his client should be tried in the UK, and if convicted sentenced here. After upholding Love's appeal the High Court stated that the CPS must "now bend its endeavours to his prosecution" (at para.126). Whether a prosecution does in fact take place is of course moot.

The law of extradition and in particular the forum bar will continue to operate as before. In this regard *Love v. US* changes very little. Whilst it may give a degree of hope to those whose alleged crimes largely took place within the UK and where they are otherwise connected to it, that hope should be tempered with the realism that *Love's* circumstances were unusual and that the law is designed to lead to an extradition in all but exceptional cases.