

Extradition and mental health.

ARNELL, P. and HENDERSON, S.

2017

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Extradition and Mental Health: the case of Lauri Love

Dr Paul Arnell, Reader in Law, Robert Gordon University, Aberdeen.

Dr Sarah Henderson, Senior Lecturer in Psychology, Robert Gordon University, Aberdeen.

The extradition of Lauri Love is in the balance. It is yet another high profile case involving extradition and mental health. The case is an illustration of how Asperger's Syndrome and the internet can conspire to engender circumstances with grave consequences. It is, Love argues, a matter of life and death. His appeal against the decisions leading up to his extradition order to the US is imminent.

The Facts

Love stands accused of unlawfully accessing computers used by United States Federal Agencies and private companies and misusing the data he unlawfully obtained. Particularly, he is accused of being involved in a number of cyber-attacks on several US-based computer networks, both private and public. Amongst the public networks attacked were those of the US Federal Reserve, the US Army and NASA. Confidential data was stolen from these including credit card details and salary information. He stands charged of a number of specific crimes including computer hacking, conspiracy to access a computer without authorisation and aggravated identity theft. An extradition request for him was made by the United States in July 2015. Westminster Magistrates' Court granted the request in September 2016, and the Secretary of State for the Home Department ordered his extradition in November of that year. An appeal of these decisions is scheduled for November 28 and 29.

Love has been diagnosed with Asperger's Syndrome (AS). This is a condition on the autistic spectrum. The judgment of the magistrates' court notes that he is high functioning and does not suffer from learning difficulties or attention deficit disorder. At Love's extradition hearing a number of witnesses gave evidence of AS and the possible consequences of Love being extradited and detained in the US. These included Love, his parents and experts in autism, US prison conditions and Love's condition itself from both the UK and the US. Evidence was given to the effect that prolonged pre-trial detention would lead to a deterioration of Love's mental state and an exacerbation of his suicidal ideas. The Government of the US accepted that Love suffers from AS but disputes the nature and degree of it.

The Law

Extradition law in the UK is governed by the Extradition Act 2003. Extraditions to the US fall within Pt.2 of the Act as that country is a Category 2 territory. These are states outside the EU with which the UK has an extradition agreement. Simply, for an extradition request to be granted the requesting country has to meet certain criteria and there cannot be any bars to the extradition. The most relevant criteria in Love's case is that the alleged crime must also be criminal under UK law. This was not in dispute, with the alleged acts being offences under ss.1 and 2 of the Computer Misuse Act 1990 ss.327, 328 and 329 of the Proceeds of Crime Act 2002, and the common law of conspiracy.

What was in dispute, and will undoubtedly be at issue in Love's appeal, is whether one of more bars to his extradition were met and therefore prevent his extradition. One of these is the forum bar. Found in s.83A of the 2003 Act it acts to prevent an extradition if a substantial measure of the requested person's relevant activity took place in the UK and that it is in the interests of justice that there should not be an extradition. Section 83A provides that a court must consider a number of factors in coming to a forum decision, including the place where the harm or loss took place, the interests of victims, a belief of a prosecutor that the UK is not the most appropriate jurisdiction to try the case, evidential considerations, and the requested person's connection to the UK. Whilst the magistrate Judge Tempia

accepted that Love had connections to the UK including his personal circumstances, health and support network she held that the forum bar failed. It was, he held, in the interests of justice for Love to be tried in the US. The bars to extradition of perhaps of greater relevance to Love are those relating to oppression and human rights, found in ss.91 and 87 of the 2003 Act respectively. In order for Love to prevent his extradition he must establish that it would be unjust or oppressive to extradite him, or that there are substantial grounds for believing that he would face a real risk of a human rights violation if sent abroad. The law provides that there is a high hurdle that must be satisfied before these bars will be met. Whilst the Magistrate did find that there is a substantial risk that Love will commit suicide if Love is extradited, she also found that there were preventative measures in place to effectively prevent suicides during the transfer and whilst in the US. Love's arguments that his extradition was barred in that it was unjust or oppressive were refused.

The human rights grounds put forward were founded upon the right to be free from torture and inhuman and degrading treatment and punishment, the right to a fair trial and the right to private and family life. All were argued by Love at the magistrates' court and rejected. Amongst the factors in favour of extradition, the court held, was that the US had a proven track record of managing vulnerable persons and was able to meet his medical and personal needs. Against were Love's AS and depression, his suicide risk, and his length of sentence. Upon balancing up all the factors it was held that there were not strong counter balancing factors that would lead to his extradition being disproportionate. Love's case was sent to the Secretary of State for the final decision, and Amber Rudd ordered his extradition in November 2016.

Mental Health

Love's case is certainly not the first extradition where mental health issues have arose. There is the well-known instance of Gary McKinnon who, like Love, was sought by the US for hacking-related offences. There have been others, including that of Haroon Aswat who has been extradited and convicted of terrorism offences in the US. Both Love and McKinnon have been diagnosed with AS. The condition falls under the umbrella of Autism Spectrum Disorder (ASD), along with other conditions including autistic disorder and childhood disintegrative disorder. AS is typically characterised by difficulties in social interactions, relations and communication and the presence of repetitive behaviours or interests. The key difference between autism and AS is that individuals with AS often have average (or above average) intellectual and cognitive functioning. As regards scale, persons on the autistic spectrum are not uncommon. The National Autistic Society states that approximately 700,000 (more than 1 in 100) people in the UK are affected, inclusive of those with AS. Of these more are male than female, although the exact gender split is not known. A feature of persons with AS is a tendency towards obsessive behaviour, which may go some way in explaining the crimes committed by Love and McKinnon – hacktivist activities with Anonymous by Love and finding the truth about UFOs by McKinnon.

Obsessiveness may be a part of the explanation of why certain people with AS cross the line into criminality. Also relevant may be that individuals with AS can appear to display little guilt, empathy or understanding of the impression their actions or demeanour have on others. In addition, individuals with AS often appear to have a preoccupation with specific areas of interest and this, coupled with characteristics associated with AS such as attention to detail and systemising, may lead to an interest in working with computers and numbers or wider topics such as maths, science and technology. Coupled with difficulties in social interactions, a keen interest in learning all they can about the topic in question, and an affinity for the logical and understandable technology this could explain why individuals with AS may gravitate towards working with computers. The question for extradition law is whether, and if so how, AS is taken into account. An important consideration here is the possible

consequences of extradition – a prison sentence in a third country and the effect that may have. Whilst the psychological literature on AS and prison experiences is limited, what does exist suggests that persons with AS may experience a greater degree of suffering than those without the condition, including the risk of bullying, victimisation and social isolation. They may adopt inappropriate coping mechanisms, which can be exacerbated by depression (of particular relevance in Love's case). Individuals with AS may be unable to easily adapt to new, stressful or changeable situations. Preferring routine and familiar surroundings and actions, being forced to cope with a novel situation could cause heightened frustration and stress. Indeed, there is an understanding that persons with AS may be mistreated or excessively affected by the prison environment and lack of appropriate resources and facilities. The National Autistic Society has published guidelines for criminal justice professionals, from first police contact to court appearances, to highlight what support the individual may need. This includes training on the best way to communicate and respond to issues, the optimum environment to prevent sensory overload, and the best way to mitigate fear, stress and anxiety.

The Future

Love's appeal is to be heard next month. Whilst the outcome is impossible to predict, somewhat similar cases suggest that his appeal will fail and the order for extradition will be upheld. If that is the outcome, then his case may be taken to the Supreme Court and/or the European Court of Human Rights. These options turn on Love being granted leave to appeal, and his case being declared admissible respectively. These outcomes are by no means certain. If the judicial challenges to his extradition fail Love will be extradited. If this happens, he will be subjected to US criminal justice, including plea bargaining. If he pleads guilty or is found guilty after trial, he will be sentenced to a period of imprisonment. The length of that sentence, and indeed where it can be served, are affected by whether he pleads guilty or not. It may be recalled that the so-called NatWest Three eventually pled guilty in Texas and served relatively short sentences – at least compared to the maximum they faced.

Extradition necessarily entails an accommodation of conflicting interests. There is the desire to address international criminality and to adhere to international extradition agreements on the one hand, and the interests of requested persons and their families on the other. Mental health conditions, particularly AS, introduce a new and complicating factor into this mix. In certain cases, the law has responded through requiring diplomatic assurances from the requesting territory providing that the condition will be adequately taken into consideration. Notably, this has not yet happened in Love's case. More generally, there is a question mark over whether diplomatic assurances are the appropriate method of addressing such situations. Alternative approaches may be UK prosecution (perhaps funded by the requesting party) or extraterritorial trials (where the requesting party could try the person within the UK). These are not without their own difficulties, however. As things stand, though, it appears clear that difficult cases such as Love's will continue to arise.