



THE COURT OF APPEAL

Record No: 2021/15

Neutral Citation Number [2022] IECA 302

**Birmingham P.
Edwards J.
McCarthy J.**

**IN THE MATTER OF THE EXTRADITION ACT 1965, AS AMENDED,
AND IN THE MATTER OF AN APPEAL**

Between/

THE ATTORNEY GENERAL

APPLICANT/RESPONDENT

V

M.C.T.W.

RESPONDENT/APPELLANT

JUDGMENT of Mr Justice Edwards delivered on the 12th day of November 2021.

Introduction

1. In this judgment, for simplicity and the avoidance of confusion, we will refer to Ms M.C.T.W who is the appellant in this appeal, but who was the respondent in the court below, simply as “the appellant”. Similarly, we will refer to the Attorney General, who is the respondent in this appeal, but who was the applicant in the court below, simply as “the respondent”.
2. This is an appeal by the appellant against the judgment of the High Court (Burns (Paul) J.) delivered on the 12th of January, 2021 , and the Order of the High Court reflecting that judgment which was perfected on the 25th of January, 2021; which *inter alia*, ordered, pursuant to s.29(1) of the Extradition Act, 1965 as amended (“the Act of 1965), that the appellant should be committed to prison, there to await the order of the Minister for Justice for her extradition to the United States of America (“the USA”).
3. The facts of the case are uncontroversial and are comprehensively reviewed and set out by Burns J. in his aforementioned judgment. In circumstances where the issues raised on this appeal are net points of law it is not proposed to do so again. It is sufficient to state that the judgment of the High Court (the neutral citation for which is [2021] IEHC 8) should be read in conjunction with this judgment. We adopt the High Court’s summary of

the facts and will refer to the facts as found only to the extent considered necessary for the purposes of addressing issues raised on this appeal.

4. The United States of America has requested the extradition of the appellant so that she may be prosecuted and tried in the State of Mississippi in respect of a single count of parental child kidnapping.
5. In very brief outline the background to the case is that the appellant, who is Danish, was married to a citizen of the USA and resided in Mississippi with her husband until recent events. They have two minor children. Unhappy differences arose between the couple leading to family law type proceedings before the Chancery Court of Lafayette. That court granted the appellant uninterrupted summer visitation and permission to travel to Denmark from the 6th of July 2018 to the 6th of August, 2018. The appellant was under court order to return the minor children to the USA by the 6th of August, 2018. Having taken the children to her native Denmark, the appellant indicated to her husband that she did not intend to return the children to the USA on 6th August, 2018, and she subsequently failed to so return them. As a result of this failure, the appellant was found by the Chancery Court of Lafayette County to be in "*wilful, intentional and contumacious contempt*" of that court's order. A final decree of divorce was entered on 11th of September, 2018, awarding custody of the children to the husband. In October 2018, a Danish court ordered that the children should be returned to the USA and to the custody of the husband. The appellant did not comply and instead moved to Ireland with the children. The husband and relevant U.S. authorities subsequently learned of this development. Proceedings were then brought in this jurisdiction pursuant to the Hague Convention seeking to have the children returned to the USA. These were compromised by agreement between the parties and the children have since been returned. However, that has not been the end of the matter.
6. As the High Court judge relates (at paragraph 14 of his judgment), on the 31st of October, 2018, a criminal complaint against the appellant for international parental kidnapping was executed by US Magistrate Judge Roy Percy, and on 4th December, 2018, a federal grand jury in the Northern District of Mississippi returned and filed an indictment charging the appellant as follows:-

"On or about August 7, 2018, and continuing to the date of Indictment, in the Northern District of Mississippi and elsewhere in and outside the Northern District of Mississippi, [MCTW], the defendant, did retain two minor children outside the United States, with the intent to obstruct the lawful exercise of another person's parental rights, in violation of Title 18, States Code, section 1204."

7. The appellant's extradition is sought so that she may be tried upon that indictment. The appellant objected to her extradition on numerous grounds before the High Court, contending:
 - (i) there is no corresponding offence in this State;

- (ii) if surrendered, her fundamental rights would not be respected, and in particular:-
 - (a) she would not receive legal aid as an indigent litigant; and
 - (b) she would be exposed to a real risk of being subjected to torture, inhuman or degrading treatment due to detention conditions in Mississippi;
 - (iii) surrender would be oppressive, disproportionate and in breach of her right to a private and family life;
 - (iv) in circumstances where the Danish authorities had decided not to prosecute the appellant, the Court could infer that there was no evidential basis for her prosecution in the USA;
 - (v) there is no public interest in the surrender of the appellant;
 - (vi) extradition should be refused due to delay on the part of the requesting state in seeking the appellant's extradition.
8. The High Court saw fit to reject all of these points of objection.
9. In this appeal the appellant now seeks to revisit some of the issues that were argued on her behalf before the High Court and which were determined against her, particularly:
- the finding by the High Court that a reference in an earlier High Court Order, dated the 7th of October, 2019, to an arrest warrant of the 31st October 2018, was a mistake and that the only arrest warrant contained within and referred to within the documentation before the court was an arrest warrant of the 4th of December 2018;
 - the finding of the High Court that correspondence had been demonstrated with an offence under s.16 of the Non-Fatal Offences against the Person Act 1997 ("the Act of 1997"), and that in that respect an earlier decision of the High Court in *Attorney General v K.M.E. and T.M.E* [2010] 4 I.R. 285 (which had decided the other way) was distinguishable on the basis that it had turned very much on its own facts;
10. The appellant seeks in her Notice of Appeal:
- I. An order discharging the appellant and refusing the respondent's request for her surrender for extradition to face trial in respect of an allegation of retaining two minor children outside the United States, with the intent to obstruct the lawful exercise of another person's parental rights, in violation of Title 18, United States Code, Section 1204;
 - II. An order quashing the High Court's decision and order pursuant to s. 29 (1) of the Act of 1965, committing the appellant to prison, to await the order of the Minister for her extradition to the USA;

- III. An order or recommendation that the appellant's costs of this appeal be covered by the Legal Aid Custody Issues Scheme, to Include Solicitor, Junior Counsel and Senior Counsel.

The Grounds of Appeal as pleaded.

11. The Notice of Appeal sets out in detail the appellant's complaints concerning alleged errors by the trial judge in the areas that were indicated (briefly) at paragraph 9 above. It is pleaded that:

- "I. *The High Court judge erred in law and in fact in finding at paragraph 38 that the reference to an arrest warrant of 31st October, 2018 in the order of the High Court dated 7th October, 2019, was a mistake and that the only arrest warrant contained within and referred to in the documentation before the High Court was the arrest warrant of 4th December, 2018, when in fact no such evidence was before the High Court from which the High Court could infer or so find that the reference was a mistake, meaning it was not clarified if there was a second warrant issued in respect of the appellant;*
- II. *The High Court Judge erred in law and in fact in holding at paragraph 9 that in accordance with s. 10 of [the Act of 1965], the requisite correspondence as between the offence in respect of which extradition was sought, namely international child abduction, and an offence under the law of the State, has been established, holding that the relevant corresponding offence in this State was an offence contrary to s. 16 of [the Act of 1997], as amended, despite the particulars of the indictment referring to the offence being committed in and outside the State of Mississippi;*
- III. *The High Court Judge erred in law and in fact in holding that the decision in Attorney General v. K.M.E. and T.K.E. [2010] IEHC 203, [2010] 4 I.R. 285, should be distinguished from the appellant's case, on the basis of a difference in the indictments, despite the fact that the indictment in both the K.M.E case and the appellant's case contained particulars of retention of a child both inside and outside the United States of America;*
- IV. *The High Court Judge erred in law and in fact in holding at paragraph 29 that s. 16 of [the Act of 1997], was an offence that corresponded to the offence of retaining two minor children outside the United States, with the intent to obstruct the lawful exercise of another person's parental rights, in violation of Title 18, United States Code, Section 1204;*
- V. *The High Court Judge erred in fact and in law in holding that the offence of retaining two minor children outside the United States, with the intent to obstruct the lawful exercise of another person's parental rights, in violation of Title 18, United States Code, Section 1204, is an offence that corresponds to s. 16 of [the Act of 1997], in isolation of any charge that the children had been taken out of the State unlawfully;*

VI *The High Court Judge erred in law in looking at the facts and information underlying the request for extradition in isolation from and to the exclusion of the High Court's judgment in Attorney General v. K.M.E. and T.K.E. [2010] IEHC 203, [2010] 4 I.R. 285, wherein it was held that the offence of domestic retention did not correspond to section 16 of [the Act of, 1997], in particular given that the indictment preferring the charge against the appellant contains express particulars that the offence is alleged to have been committed in and outside the Northern District of Mississippi."*

The reference to an arrest warrant of 31st of October 2018

12. In October 2019 the requesting state, namely the United States of America, transmitted a request in writing in accordance with s.23 of the Act of 1965 to the appropriate authorities in Ireland seeking the extradition of the appellant. The request was received by the Minister for Justice on the 18th of October 2019 who issued a certificate dated the 22nd of October 2019 for the purposes of s.26(1)(a) of the Act of 1965.
13. In paragraph 4 of his judgment the High Court judge lists the documentation that was received by the Minister from the requesting state, being:
 - (i) a certificate of the Attorney General of the USA, dated 17th October, 2019, certifying that Thomas N. Burrows is, and was at the relevant time, Associate Director of the Office of International Affairs, Criminal Division, USA;
 - (ii) a certificate of Thomas N. Burrows dated 17th October, 2019, attaching the affidavit, with attachments, of Parker S. Kline, USA Attorney, USA Attorney's Office for the Northern District of Mississippi, offered in support of the request for the extradition of the respondent and asserting that true copies of those documents are maintained in the official files of the US Department of Justice in Washington D.C.; and
 - (iii) an affidavit of Parker S. Kline dated 11th October, 2019, together with the following exhibits: a copy indictment; a copy arrest warrant; a copy of applicable statutory provisions; an affidavit of FBI Special Agent Molly Blythe and photographs of the respondent.
14. It is clear from this documentation, with which we have also been provided, that while a criminal complaint in respect of international parental kidnapping was made in respect of the appellant on the 31st of October 2018, a domestic (i.e., US) warrant did not issue for the appellant's arrest until the 4th of December 2018 following her indictment by a grand jury on the same date in the circumstances described earlier at paragraph 6 above.
15. Following the issuance of the Minister's said certificate for the purposes of s.26(1)(a) of the Act of 1965 an application pursuant to s.7(1) of the Act of 1965 was made to the High Court (before Quinn J.) on the 24th of September 2019 for the arrest of the appellant. Quinn J. issued a High Court warrant for the arrest of the respondent on that date, which warrant was duly executed on the 7th of October 2019.

16. It was not adverted to at the time that Quinn J.'s order was perfected that the recitals to his order included the statement that the appellant was the subject of "*an arrest warrant issued on the 31st day of October 2018 by Order of the United States District Court for the Northern District of Mississippi charging that:*

'the said [M.C.T.W] did commit the following offence as charged in criminal case number 3:18CR151 –

Count 1:

International Parental Kidnapping, in violation of Title 18, United States Code, Section 1204, which carries a maximum penalty of 3 years imprisonment'."

17. The recital in question was incorrect to the extent that while a criminal complaint had been made in respect of the appellant on the 31st of October 2018, the domestic warrant for her arrest did not issue until the 4th of December 2018.
18. A similarly incorrect statement appears to have been later carried through into another order of the High Court, i.e., that made by Hunt J. on the 7th of October 2019 remanding the appellant on bail pending her extradition hearing following the execution of the High Court's arrest warrant.
19. At the substantive hearing in the court below, counsel for the appellant emphasised that the respondent was being put on full proof of the lawfulness of the extradition request in every respect and pointed, *inter alia*, to alleged defects in the documentation associated with the application including the incorrect statement in recitals to the High Court's earlier orders as to the date of the domestic arrest warrant issued in respect of the appellant.
20. The High Court (Burns, (Paul) J.,) resolved the issue as follows:

"It was submitted that as set out in the order of the High Court dated 7th October, 2019, there is reference to a US arrest warrant issued on 31st October, 2018, whereas the affidavit of Parker S. Kline at paragraph 9 refers to a criminal complaint of that date at para. 7 and refers to an arrest warrant of 4th December, 2018. I am satisfied that the reference to an arrest warrant of 31st October, 2018, in the order of the High Court dated 7th October, 2019, is a mistake and that the only arrest warrant contained within and referred to in the documentation before the Court was the arrest warrant of 4th December, 2018. Counsel on behalf of the respondent did not suggest any other arrest warrant had been issued."

21. In submissions before us, it has been complained on behalf of the appellant that the trial judge's ruling on this aspect of the matter was erroneous in circumstances where there was no evidence before the High Court from which one could infer that there had been the mistake identified by the trial judge. It was submitted that, despite the intimations of the trial judge, the respondent had not discounted the possibility of the existence, or issuance, of more than one domestic arrest warrant in respect of the appellant. It was submitted that there was no freestanding or lawful basis on which the trial judge could

have concluded that the reference to a warrant of the 31st of October 2018 was a mistake.

22. We are satisfied that the trial judge dealt with the issue correctly and that he was not in error in how he dealt with it. There is nothing in the documentation received from the requesting state to suggest that there may have been more than one criminal complaint against the appellant, or more than one domestic arrest warrant in respect of her, or that the requesting state may have made more than one request for the appellant's extradition. The documentation received from the requesting state is crystal clear as to the date of the domestic arrest warrant and contains no ambiguity, and no error. The error, such as it is, is in the Irish paperwork not in the paperwork received from the requesting state. Moreover, it is not difficult to see how it might have happened. The High Court judge was fully entitled to infer in the circumstances before him that the earlier procedural orders had merely recited an incorrect detail and that it was simply a mistake. The earlier orders were not concerned with the merits, or otherwise, of the extradition request, nor were they concerned with the merits or otherwise of the appellant's substantive objections to her extradition. It was not suggested at the substantive extradition hearing that the appellant was not validly before the court.
23. In the circumstances I have no hesitation in dismissing this complaint as being without foundation. I would therefore reject the complaint in Ground of Appeal No. I.

The Correspondence Issue

24. The appellant contends that the trial judge erred in finding correspondence between the offence in respect of which the USA seeks the extradition of the appellant and the offence in this jurisdiction of parental child abduction contrary to s.16 of the Non-Fatal Offences against the Person Act 1997.

Relevant Statutory Provisions

25. It is convenient to set out the terms of s.16 of the Act of 1997 at this point. While the appellant's "ground of appeal no II" refers to s.16 of the Act of 1997 "as amended", s.16 has only been amended as to the penalties to be applied on summary conviction. The ingredients of the offence remain as originally enacted:
- 16.(1) A person to whom this section applies shall be guilty of an offence, who takes, sends or keeps a child under the age of 16 years out of the State or causes a child under that age to be so taken, sent or kept—
- (a) in defiance of a court order, or
 - (b) without the consent of each person who is a parent, or guardian or person to whom custody of the child has been granted by a court unless the consent of a court was obtained.
- (2) This section applies to a parent, guardian or a person to whom custody of the child has been granted by a court but does not apply to a parent who is not a guardian of the child.

- (3) It shall be a defence to a charge under this section that the defendant—
 - (a) has been unable to communicate with the persons referred to in subsection (1) (b) but believes they would consent if they were aware of the relevant circumstances; or
 - (b) did not intend to deprive others having rights of guardianship or custody in relation to the child of those rights.
 - (4) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction to a Class C fine or to imprisonment for a term not exceeding 12 months or to both, or
 - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both.
 - (5) Any proceedings under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions.
26. According to the indictment proferred against the appellant, quoted already at paragraph 6 above, the offence charged is one "*in violation of Title 18, United States Code, section 1204.*" It is therefore appropriate and convenient at this point to note the terms of Title 18, United States Code, section 1204. The text of Title 18, United States Code, section 1204 was provided as a document in support of the extradition request, as is required by s.25(1)(c) of the Act of 1965, as amended. It is in these terms:

Title 18, United States Code, Section 1204

International Parental kidnapping.

- (a) Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.
- (b) As used in this section--
 - (1) the term "child" means a person who has not attained the age of 16 years; and
 - (2) the term "parental rights", with respect to a child, means the right to physical custody of the child--
 - (A) whether joint or sole (and includes visiting rights); and
 - (B) whether arising by operation of law, court order, or legally binding agreement of the parties.
- (c) It shall be an affirmative defense under this section that--
 - (1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained

pursuant to the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act and was in effect at the time of the offense;

(2) the defendant was fleeing an incidence or pattern of domestic violence;
or

(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980."

27. The statutory requirements with respect to the establishment of correspondence, or double criminality as it is sometimes called, are those set out in s.10 of the Act of 1965, as amended by the Extradition (European Union Conventions) Act 2001 ("the Act of 2001). In that regard, it is relevant that the United States of America has been designated as a "convention country" for the purposes of the Act of 2001 by the Extradition (European Union Conventions) Act 2001 (Section 4) Order 2010, S.I. No 43 of 2010. To the extent relevant, s.10 of the Act of 1965, as amended, provides:

10.— (1) *Not applicable*

(1A) Subject to subsection (2A), extradition to a requesting country that is a Convention country shall be granted only in respect of an offence that is punishable

(a) under the laws of that country, by imprisonment or detention for a maximum period of not less than one year or by a more severe penalty, and

(b) under the laws of the State, by imprisonment or detention for a maximum period of not less than 6 months or by a more severe penalty,

and for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than 4 months or a more severe penalty has been imposed.

(2) *Not applicable*

(2A) *Not applicable*

(3) In this section 'an offence punishable under the laws of the State' means —

(a) an act that, if committed in the State on the day on which the request for extradition is made, would constitute an offence, or

(b) in the case of an offence under the law of a requesting country consisting of the commission of one or more acts including any act committed in the State (in this paragraph referred to as 'the act concerned '), such one or more

acts, being acts that, if committed in the State on the day on which the act concerned was committed or alleged to have been committed would constitute an offence,

and cognate words shall be construed accordingly.

- (4) In this section 'an offence punishable under the laws of the requesting country' means an offence punishable under the laws of the requesting country on —
- (a) the day on which the offence was committed or is alleged to have been committed, and
 - (b) the day on which the request for extradition is made,

and cognate words shall be construed accordingly.

Relevant Jurisprudence

28. There is extensive jurisprudence on the correct approach to considering whether possible correspondence exists. In the extradition context relevant cases include *Hanlon v. Fleming* [1981] I.R. 489; *Attorney General v. Dyer* [2004] 1 I.R. 40, and *Attorney General v. Hilton* [2005] 2 I.R. 374, cited by the appellant. Although not cited to us we would also point to *Attorney General v. Parke* [2004] IESC 100 in which the important point is made that a court hearing an application for extradition is put on inquiry and the proceedings, including the making of any determination with respect to whether correspondence can be demonstrated, have an inquisitorial nature.
29. There are many more relevant cases in the EAW context where, although the statutory scheme is different, the overall approach (except where Article 2.2 of the EAW Framework Decision is being relied upon) is not greatly dissimilar. However, no EAW cases were relied upon in argument by either side.
30. The case of *Hanlon v. Fleming* concerned a warrant for the arrest of the plaintiff on a charge, specified in the warrant, that on a certain occasion in England he "dishonestly received stolen goods, namely, nine electric detonators and four ounces of Eversoft plastic gelatine, knowing or believing the same to be stolen goods" contrary to s. 22 (1), of the Theft Act, 1968. The warrant was endorsed for execution in this jurisdiction and the appellant was arrested and brought before a District Judge. The District Judge concerned was satisfied, *inter alia*, that the offence set out in the warrant corresponded with the offence of receiving stolen property contrary to s.33(1) of the Larceny Act 1916 and directed that the plaintiff be delivered into the custody of the English police in order to be brought to England. The plaintiff applied by special summons in the High Court for his release pursuant to s.50 of the Act of 1965, challenging, *inter alia*, the District Judge's ruling on the correspondence issue. He was unsuccessful before the High Court and appealed to the Supreme Court.
31. The Supreme Court upheld the District Judge's ruling on correspondence as having been correct. Henchy J. delivered the sole judgment and in doing so made a number of

pertinent observations concerning how such an issue should be approached. At issue was the fact that the charge under the relevant section under the Theft Act alleged that the plaintiff had received the property in question "knowing or believing the same to have been stolen" whereas an offence contrary to s.33(1) required proof that an accused received the property "knowing the same to have been stolen". Henchy J. said:

"10. ... the relevant decisions of this Court (for example, The State (Furlong) v. Kelly 1971 I.R. 132, Wyatt v. McLoughlin 1974 I.R. 378 and Wilson v. Sheehan 1979 I.R. 423) show that it is a question of looking at the factual components of the offence specified in the warrant, regardless of the name given to it, and seeing if those factual components, in their entirety or in their near-entirety, would constitute an offence which, if committed in this State, could be said to be a corresponding offence of the required gravity. The required gravity is not in issue here. What is in issue - and this is the nub of this appeal - is whether the factual elements of the specified offence, if laid in this State, either precisely or substantially as set out in the warrant, as the particulars of an indictment for an offence contrary to s. 33(1) of the Larceny Act, 1916, would be a correct basis for a finding of guilty by a correctly charged jury."

32. A little further on in his judgment he further stated:

"13. In dealing with the arguments propounded in this case I am not entitled to analyse or interpret the Theft Act 1968. I must focus my attention on the words "knowing or believing the same to be stolen goods" and first consider whether a conviction under s. 33(1) which contained those words would be good. I am satisfied that it would not. Apart from the fact that it might be held bad for duplicity, it would indicate that the jury may have found the mens rea to be something less than actual knowledge that the goods had been stolen. And that would be in the teeth of s. 33(1) and the judicial decisions under it. While knowledge and belief frequently coincide or overlap (for example, I both know and believe that this is the Supreme Court), there are many matters which one may believe to be correct without being able to say that one knows them to be correct."

33. Later again, he went on to say:

"15. I would therefore hold that the words "or believing" in the description of the specified offence prevent the component elements of that offence, if set out in their entirety in an indictment for an offence in this State, from having the necessary statutory correspondence with an offence contrary to s. 33(1) of the Larceny Act, 1916.

16. I have reached that conclusion, as the authorities require, by confining my inquiry to a comparison of the factual components of the two offences that are said to correspond."

34. However, as the late Supreme Court judge went on to indicate, this did not dispose of the issue before the court. In that regard he stated:

"20. The fact that there is not total correspondence between the ingredients set out in the warrant and the ingredients necessary for an offence contrary to s. 33(1) of the Larceny Act, 1916, does not, however, dispose of this ground of appeal. If the ingredients enumerated in the warrant were necessarily less in number than those required for an offence under the law of this State, there would be an absence of the correspondence of offences envisaged by s. 47(2) of the Extradition Act, : see per Ó Dálaigh C.J. in The State (Furlong) v. Kelly 1971 I.R. 132, at p. 141. However, the ingredient expressed by the words "or believing" does not necessarily or invariably extend the scope of the offence specified in the warrant beyond the ingredients of an offence contrary to s. 33(1). The only difference in essence between the factual ingredients of the two offences in question is that the English offence allows "believing" as an alternative to "knowing". If, therefore, the Director of Public Prosecutions were to lay, mutatis mutandis, an indictment in the factual form set out in the warrant, but omitting the words "or believing", he would, on the authority of the decision of this Court in The State (Furlong;) v. Kelly, be charging a corresponding offence for the purpose of s. 47(2) of the Extradition Act, ; for the Irish offence would not have (in the words of Ó Dálaigh C.J. in that case, at p. 141) "an additional essential ingredient". On the contrary, the true position is that the English offence has an additional alternative ingredient."

35. The case of *Attorney General v. Dyer* involved a request to extradite Mr Dyer to Jersey to face trial on numerous counts of essentially obtaining payments through false pretences. The High Court had seen fit to reject all objections to the requested person's extradition, including an objection that correspondence had not been established. Mr Dyer then appealed to the Supreme Court. The conduct complained of was particularised in the various counts in the warrant (although no label or name was put on the alleged offences) which were said to be "contrary to common law". The conduct outlined was not, however, stated in terms to have been committed fraudulently, or with intent to defraud, or even dishonestly. The Supreme Court in hearing the appeal was faced with determining whether correspondence could be demonstrated with the candidate offences being proffered to the court, namely (in circumstances where the distinction between misdemeanours and felonies had not yet been abolished) the misdemeanour offence of obtaining by false pretences contrary to s.32 of the Larceny Act 1916 as amended by s.9 of the Larceny Act 1990, and the felony offence, again of obtaining by false pretences, arising under s.10 of the Criminal Justice Act, 1951. Both of these offences required that the impugned conduct should have been committed "with intent to defraud".
36. In ultimately concluding that correspondence was not made out, Fennelly J. who gave judgment on behalf of the Supreme Court offered the following observations. Referring to earlier caselaw (*i.e.*, *The State (Furlong) v. Kelly* [1971] I.R. 132, *Wyatt v. McLoughlin* [1974] I.R. 378, *Wilson v. Sheehan* [1979] I.R. 423 and *Hanlon v Fleming* [1981] I.R. 489) he said:

*"In the present case, the approach so consistently laid down in these cases runs into the difficulty that the absence of any allegation of "intent to defraud" would appear to render the warrants deficient for the purposes of extradition. The question which then arises is whether evidence is admissible to explain the relevant provisions of the law of Jersey so as to fill the gap. The cases which I have cited contain several references to the possibility of resort to proof of foreign law. As already pointed out Walsh J. in *The State (Furlong) v. Kelly* [1971] I.R. 132 contemplated the possibility that evidence of English law might have to be introduced, even to explain such commonplace terms as "steal." He appears to have modified his position on this point in *Wyatt v. McLoughlin* [1974] I.R. 378, where, as already noted, he said at p. 395 that that the court was "not at all concerned with the construction of English law." Nonetheless, in the same case, he noted at p. 398 that "the same name may be used in this country as the name of a crime, because the acts complained of, although having identical names, may constitute quite different criminal offences in different countries." However, in the following paragraph, he appears to disavow any notion that the court is required to embark on an examination of the English statute, going so far as to disapprove of the fact that the High Court judge had done so. In any event, the matter has been clarified in the later cases. The approach of Henchy J, in *Wilson v Sheehan* [1979] I.R. 423, was that, in the absence of expert evidence, the District Court would be debarred from considering the contents of the English Theft Act. Words would, prima facie, be given their ordinary meaning in what he called "layman's language."*

20 The result seems to me to be the following. Normally, words used in an extradition warrant will be given their ordinary meaning. This enables the courts to give effect, without resort to extrinsic evidence, to extradition requests where words, such as "steal," "rob" and "murder," are used. It is possible that such words have different meanings in the law of the requesting state, but, in the absence of anything suggesting that, the courts will examine correspondence by attributing to such words, when used in a warrant, the meaning that they would have in Irish law. In some cases, however, the word used in the requesting jurisdiction may be unfamiliar to Irish law. A good example was suggested from the bench during the hearing. In Scots law, the word, "reset" is used to describe the harbouring of stolen goods. If that word were used in a warrant emanating from Scotland, it would clearly be necessary to have evidence of Scots law to explain it. I can see no basis upon which it could be refused"

37. Further helpful dicta are to be found in *Attorney General v. Hilton* [2005] 2 I.R. 374. That case involved a Part III rendition request from England and was concerned with whether there was a corresponding offence in Ireland to the offence specified in the English warrant on foot of which the request was made, namely that of cheating the public revenue. Denham J., before ultimately holding that there was no correspondence with any offence in Irish law, there being no Irish common law offence of cheating the public revenue, had remarked:

"The test for determining "correspondence" when analysing an offence of another jurisdiction is well established in Irish law. The court looks to the alleged acts of the person sought as stated on the warrant and considers whether they would constitute an offence in this jurisdiction."

The Appellant's Submissions

38. The appellant has sought to draw our attention in the first instance to the arrest warrant from The United States District Court for the Northern District of Mississippi. It was pointed out that it exhibits a notable absence of any details of the acts alleged to be committed. That warrant does not refer to alleged acts and simply states:
- "The offense is briefly described as follows: International Parental Kidnapping."*
39. That said, it is acknowledged that the warrant alludes to the existence of an indictment for the offence or violation in respect of which the appellant was sought to be arrested, the box marked "Indictment" being ticked in a positive fashion on the warrant.
40. As to the indictment itself, the appellant submits that it fails to indicate the formal charge or allegation that the appellant is faced with, in that it fails to give pertinent particulars.
41. It was argued on the appellant's behalf that when the rule of correspondence is applied to this charge, irrespective of the name it is given, the requirement for a corresponding offence in Irish law is not made out. It was submitted that the facts relied upon by the United States in this charge do not correspond to the Irish offence of abduction of a child by a parent, pursuant to s.16 of the 1997 Act.
42. It was submitted that the offence for which the appellant's extradition is sought is framed as a partly domestic complaint of abduction, with such particulars as are provided citing it as having occurred *"in the Northern District of Mississippi and elsewhere in and outside the Northern District of Mississippi."* Further, it was submitted that any domestic aspect to the charge brings it outside the ambit or scope of s.16 of the Act of 1997, which is expressly limited to removal outside the State, and which by implication, or application of the *maxim unius est exclusio alterius* (i.e., one thing excludes the other), excludes removal within the State as being an offence. It was submitted that in stark contrast the offence for which extradition is sought expressly includes acts of retention in and outside the State of Mississippi. It was contended that on the basis of the charge proffered in the indictment the Court can infer that the offence can be committed by domestic acts, that it is not limited to acts that were committed outside the State. The same offence does not exist in Irish law. Under Irish law a person or parent who abducts a child domestically within the State does not in fact commit any offence and does not commit an offence under s.16 of the Act of 1997.
43. The appellant submitted, in further elaboration of this, that in order to satisfy the correspondence requirement, the indictment charging the offence needed to be limited to taking, sending or keeping a child outside Ireland. However, the offence charged alleges

that (by acts committed) in and outside the Northern District of Mississippi, the appellant retained the children outside the United States. It was submitted that the wording of the charge presented clear difficulties, as it alleged that the offence had occurred (and was continuing to occur) in and outside the Northern District of Mississippi, which is not outside the United States of America.

44. Furthermore, it was suggested, for the offence to correspond with an offence under s.16 of the Act of 1997 there would need to be an allegation that the appellant 'took' the children out of the United States, not simply retained them. Crucially, it was said, the indictment and arrest warrant contained no allegation in respect of an act of 'taking'.
45. The appellant submitted that we do not have to look beyond the express limitation in s.16, which only criminalises acts involving the taking, keeping or sending of a child (under the age of 16) out of the State, to find that there is no correspondence. It was contended that any other view would be contrary to the plain meaning of the section. In contrast, the offence in respect of which extradition is sought is not limited in the same way, rather it relates to acts involving the retention of a child both in and outside of the State of Mississippi. The appellant submits these differences are irreconcilable and that in consequence correspondence cannot be demonstrated between the offence to which the warrant relates and the candidate offence in Irish law, namely s.16 of the Act of 1997.
46. Although it was submitted that we do not need to go any further than looking at what the appellant characterises as "*the express limitation of the offence to being committed outside the State*", the appellant further submitted there is a substantial difference between the extradition offence which, ignoring the title, is limited to 'retention' and the s.16 offence which requires that the offender '*takes, sends or keeps*' a child out of the State. It was submitted a further fundamental difference is that the triad of acts that can constitute an offence under s.16 depends on the action of an unlawful 'taking'. The appellant contends that the order in which the words in the triad appear has implications for their meaning and how they should be interpreted.
47. It was submitted that '*takes, sends or keeps*' is a composite phrase, and that in applying a composite phrase to a set of facts the phrase and words combining the phrase are to be taken as a whole. We were referred to a number of cases on the interpretation of composite phrases, including *Bromley London Borough Council v. Greater London Council* [1983] 1 AC 768; and *Exxon Corpn. v. Exxon Insurance Consultants International Ltd* [1981] 3 All E.R. 241. In the latter case Lord Justice Oliver had made the observation, which the appellant commends to us, that:

"I do not think that the right way to apply a composite expression is, or at any rate is necessarily, to ascertain whether a particular subject matter falls within the meaning of each of the constituent parts, and then to say the whole expression is merely the sum total of the constituent parts. In my judgment it is not necessary, in construing a statutory expression, to take leave of one's common sense..."

48. The appellant asks us to note that there has also been much judicial commentary on the statutory interpretation of composite phrase components of which ? are governed by 'or'. It was submitted that the use of 'or' is not automatically to be taken as implying an opposite or antithesis. The appellant contends that in s.16 of 1997, which refers to a person who "takes, sends or keeps", it is not to be inferred that the second ingredient action, i.e., "sends" and third ingredient action, i.e., "keeps", which are separated by the word "or", are to be afforded an antithetical interpretation. Rather it is submitted that, in affording these words their plain meaning there is a degree of overlap between them. The interpretation to be given to the use of "or" in the phrase for "repair or maintenance" was considered in *ACT Construction Ltd. v. Customs and Excise Commissioners* [1982] 1 All E.R. 84 (at 88), where Lord Roskill opined:

"The argument in the Court below appears to have proceeded on the basis that the words 'repair or maintenance' are used in antithesis to one another...the two words are not used in antithesis to one another. The phrase is a single composite phrase 'repair or maintenance' and in many cases there may well be an overlap between them."

49. It was submitted that Peart J. in *Attorney General v. K.M.E. and T.K.E.* [2010] IEHC 203, [2010] 4 I.R. 285 had implicitly recognised that to the extent that the ingredients of the offence created by s.16 of the Act of 1997 require that a person "'takes, sends or keeps' a child under the age of 16 years out of the State", incorporating the composite phrase 'takes, sends or keeps', the words comprising that composite phrase were not to be considered as bearing the individual meanings afforded to them in quotidian usage and treated disjunctively as being alternatives. Rather it was maintained that the phrase had to be considered as a whole. Because the phrase in question is a composite one, the relationship between the words "takes" "sends" or "keeps", and the phrase "out of the State", was the same. However, the order of the words within the composite phrase was important. The word "takes" precedes "sends or keeps" and, it was argued, is not governed by "or". The significance of this, it was urged upon us, and if we understand the argument correctly, is that the offence can be committed either by simply "taking", or by "taking and sending", or by "taking and keeping", a child under the age of 16 years out of the State. Approached on any of those bases, s.16 does not criminalise action which does not involve the child in question moving out of the (reference) State.

50. It was submitted that Peart J. had taken that approach in considering s.16 of the Act of 1997 in *Attorney General v. K.M.E. and T.K.E.* [2010] IEHC 203, [2010] 4 I.R. 285. In that case he found that as the warrant in question (relating to TKE, the children's mother) alleged simply that on a specified date TKE "*intentionally and knowingly retained [the children] when [she] knew that the said retention violated the express terms of an order of a court ...*", and did not allege that the children were taken, sent or kept out of the jurisdiction on the date in question, there could be no correspondence with a s.16 offence. It was submitted that the trial judge in the present case fell into error in failing to follow Peart J.'s decision in the *K.M.E. and T.K.E.* case, and by seeking to distinguish it. We will review the *K.M.E. and T.K.E.* decision later in this judgment.

The Respondent's Submissions

51. It was submitted that on the facts of this case, the High Court was correct to find the relevant corresponding offence in this State to be an offence contrary to section 16 of the Act of 1997.
52. The High Court looked at the factual components of the offence specified in the warrant. It further noted the details set out in the indictment particularizing the offence and conduct alleged against this appellant. The arrest warrant had indicated that the appellant was "*accused of an offence or violation based on the following document filed with the court*", below which it was indicated by the ticking of a box that it was an indictment. The warrant went on to say that the offense "*is briefly described as follows: "International Parental Kidnapping."* Both the arrest warrant and the indictment were supplied as documents supporting the extradition request and the High Court was entitled to read and construe them together. It was submitted that there is no requirement for an arrest warrant to contain the same particulars as an indictment. The respondent did not accept that the arrest warrant was insufficiently particularized in circumstances where it expressly referenced the indictment filed with the court.
53. The indictment sets out the count proffered as: -
- "On or about August 7, 2018, and continuing to the date of Indictment, in the Northern District of Mississippi and elsewhere in and outside the Northern District of Mississippi, [M.C.T.W.], defendant, did retain two minor children outside the United States, with the intent to obstruct the lawful exercise of another person's parental rights, in violation of Title 18, United States Code, section 1204."*
54. The particulars of the alleged offence set out in the indictment indicated that from the 7th of August 2018, the appellant retained her two minor children outside of the United States in defiance of a court order and in breach of their father's parental rights. This indictment described a continuing offence and was all encompassing to include offending conduct committed "*in the Northern District of Mississippi and elsewhere in and outside the Northern District of Mississippi*". It further identified with precision the law underpinning the charge, namely Title 18 of the United States Code, Section 1204.
55. In circumstances where subsection (a) of section 1204 provides: "*Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States ...*", it was submitted that this was a sufficient analogue to subsection (1) of s.16 of the Act of 1997 to support a finding of correspondence, in circumstances where s.16(1) provides "*A person to whom this section applies shall be guilty of an offence, who takes, sends or keeps a child under the age of 16 years out of the State.....*" It was submitted that in the instant case the appellant kept or retained the children out of the USA in defiance of a court order. Moreover, in circumstances where the appellant had, in breach of a court order, retained the children in Denmark initially from the 7th August 2018, and had then moved to Ireland with the children, it was understandable that the indictment was drafted as broadly as it was. The

offence as described in the arrest warrant and indictment, the statutory definition of the offending alleged, and the undisputed material facts of the case as deposed to in the affidavit supporting the extradition request, were all matters that the High Court was entitled to have regard to and take into account in assessing whether correspondence with the candidate offence could be demonstrated to exist.

56. It was submitted that if the offending conduct underpinning the charge proffered against the appellant in the indictment was committed in this jurisdiction, the appellant would be regarded as having committed the offence of parental child abduction contrary to s.16 of the Act of 1997.
57. It is relevant, says the respondent, that the appellant did not in fact abduct the children domestically. Title 18 provides for a number of alternative scenarios, including removing a child from the United States, attempting to so do, or (as was done in this case) retaining a child (who has been in the United States) outside the United States (in all cases with intent to obstruct the lawful exercise of parental rights). Section 16 of the Act of 1997 in this jurisdiction also provides for a number of alternative scenarios. It provides that an offence is committed by a person to whom the section applies (i.e., a parent) "*who takes, sends or keeps a child under the age of 16 years out of the State....*" either in defiance of a court order or without the consent of the other parent or a guardian or other person having custody by order of a court. It was submitted that the fact that the indictment pleads that the offending may have been committed "*in and outside the Northern District of Mississippi*" is immaterial in circumstances where the actual offending conduct embraced by what, it is conceded, was a widely cast indictment (at least in territorial terms), is adequately covered by the candidate offence. The respondent urges upon us that it is a matter of significance that the appellant's whereabouts were unknown at the time that the indictment was drafted.
58. In so far as the appellant's reliance upon the case of *Attorney General v. K.M.E. and T.K.E.* is concerned, it was submitted on behalf of the respondent that the trial judge did not err in holding that the judgment of the High Court in the *K.M.E. and T.M.E* case should be distinguished from the appellant's case. It is submitted that the facts of the *K.M.E. and T.M.E* can be distinguished from the instant case in circumstances where the alleged offending in *K.M.E. and T.M.E* referred to a specific single day whereas it appeared from the evidence that the children had been removed subsequent to that specific day. Further distinguishing features include the background of violence, intimidation and injury in *K.M.E. and T.M.E.*, and the fact that, unlike in the present case, the children were not returned by way of Hague Convention Proceedings taken. Other differentiating factors, not replicated in the present case, were that both children in the *K.M.E. and T.M.E.* case were well settled in this jurisdiction and there was considered to be a grave risk that the children could be exposed to physical and psychological harm if they were returned to the United States of America. It is fair to say that the High Court in the instant case was not posed with the same factual matrix as the *K.M.E. and T.M.E* case. Having regard to these differences it was submitted that the trial judge was entitled to assess the instant case on its own facts.

59. It was submitted that the decision of Peart J. in *Attorney General v. K.M.E. and T.K.E.* was predicated on its own very specific facts and that in circumstances where it determined no novel point of law it has no precedential value. It was urged that it does not represent a binding precedent either for the purposes of Irish extradition law or Irish law on child abduction. Peart J. did not determine or resolve a contested interpretation of s.16 of the Act of 1997. Rather he determined that on the facts before him the offence with which the appellant was charged, and which was the subject of the extradition request in that case, did not correspond with s.16 of the Act of 1997; in as much as the facts underpinning that offence, if proven before an Irish Court, would be insufficient to allow a verdict of guilty of an offence under s.16 of the Act of 1997 to be recorded. It was submitted that that was all that he decided.

Decision on the correspondence issue

60. In my assessment the trial judge was entitled, and was correct, to determine that correspondence could be demonstrated between the offence charged in the present case and the candidate offence proffered for correspondence purposes, namely s.16 of the Act of 1997.
61. The conduct criminalised by Title 18, United States Code, section 1204 is clearly stated in these terms:
- “Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.”
62. In so far as it concerns removal of a child from the United States, or retention of a child (who has been in the United States) outside the United States, it sufficiently mirrors the conduct criminalised by s.16 of the Act of 1997 to leave us in no doubt that there is the required correspondence. In so far as section 1204 also covers attempts to remove a child from the United States, it is simply the position that the offence created by that section contains an additional means by which it can be committed. However, as was made clear in *Hanlon v. Fleming* [1981] IR 489, the fact that there is not total correspondence between the ingredients set out in the warrant and the ingredients necessary to establish the candidate offence may be beside the point. What is critical is that the ingredients necessary to establish the offence identified in the warrant on which the extradition request is based, should not be less in number than those required for an offence under the law of this State, and that is the case here. We are concerned with the ingredients of the offence in respect of which extradition is being sought on the basis on which it was in fact charged, not with every basis on which the offence as provided for in the statute concerned might in theory have been charged. We are satisfied beyond any doubt that the offence in respect of which the appellant’s extradition is being sought involved retention of a child (who had been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights, which is conduct that is also criminalised in this jurisdiction by s.16 of the Act of 1997. The fact that an offence under

Title 18, United States Code, section 1204 was also capable of being committed in other ways is neither here nor there. The law is clear. The existence of alternative means of committing the offence in the requesting state does not preclude a finding of correspondence once the extradition request relates to the commission of the offence by means which would also represent criminal conduct in this jurisdiction.

63. I consider that the broad way in which the indictment was cast in this case is a matter of no consequence in terms of our ability to find correspondence. Contrary to what the appellant has suggested, to have charged the offending conduct as having occurred "*in the Northern District of Mississippi and elsewhere in and outside the Northern District of Mississippi*" does not automatically imply that there was domestic retention of the children concerned. In principle, an offender, while remaining at all times within the United States, could, through an agent or agents based abroad which he/she had recruited and was employing and controlling, retain a child (who had been in the United States) outside the United States. In the present case, however, the evidence is all one way that the children in question were brought from Denmark to Ireland by the appellant in breach of an order of the Chancery Court of Lafayette. The appellant concedes that she did so in the affidavit that she swore in these proceedings on the 17th of February 2020. Neither the appellant nor the respondent has suggested for a second that there was domestic retention (i.e., that custody of the children was retained by the appellant in breach of parental rights while they were still in the United States, much less still in the Northern District of Mississippi). In circumstances where, as the respondent points out, the appellant's whereabouts were unknown at the time that the indictment was drafted, it was entirely sensible to have drafted it in the broad terms in which it was drafted, and the fact that it was drafted in that way does not preclude a finding of correspondence.
64. I am also satisfied that the trial judge was perfectly entitled, and again was correct, to distinguish the case of *Attorney General v. K.M.E. and T.K.E.* from the present case. The respondent is correct that it did not represent a binding precedent.
65. It might perhaps be helpful to elaborate on this view more fully. That case was concerned with extradition requests by the United States of America in respect of a mother (K.M.E.) and her daughter (T.K.E.), so that they could stand trial for the offence under Texas law of interfering with a custody order in respect of T.K.E.'s children (who were also K.M.E.'s grandchildren). The candidate corresponding offences put forward by the Irish Attorney General were an offence under s.17 of the Act of 1997 in the case of K.M.E, and an offence under s.16 of the Act of 1997 in the case of T.K.E. Accordingly, in so far as the case may be relevant at all to the present proceedings it is only relevant in so far as it concerned T.K.E.
66. In considering the issue of correspondence in the case of T.K.E., Peart J. said:
- "[70] *Counsel for the respondents has referred to the fact that for the offence under s. 16 of the Act of 1997 to correspond it is necessary that the indictment charging the offence against T.K.E. should include an allegation that she took the children out of the United States of America, since the offence under s. 16 requires that the child*

be taken, kept or sent out of the State. When one reads the indictment for T.K.E. there is no such allegation contained therein. It alleges simply that on the 3rd April, 2005, T.K.E. "intentionally and knowingly retained [the children] when [she] knew that the said retention violated the express terms of an order of a court ..."

[71] *It is only in the setting out of the facts of the case in the extradition request itself that one learns that subsequently T.K.E. left the United States of America with the children and came to this country. The question which arises is whether for the purpose of establishing correspondence to an offence here under s. 16 of the Act of 1997, these additional facts which do not form part of the facts alleged in the indictment for the purpose of the offence under Texas law can be had regard to. Counsel for the respondents' submits that this is impermissible and that it amounts to what in another context would be referred to as "dressing up the warrant".*

[72] *What is required to be done for the purpose of establishing that there is correspondence is to examine the facts which are alleged to give rise to the offence charged. Those are the relevant facts from which to decide if they would be sufficient to amount to an offence under Irish law.*

[73] *In my view it is not appropriate or correct to look at the entire request for extradition, and see if within all the facts disclosed, including facts unrelated to the offence which is the subject of the indictment, some other or any offence would have been committed on those facts under Irish law. Let us suppose, for example, that the foreign offence charged on the indictment was clearly not an offence under Irish law, but among the request documents was a recital of events on the day following the commission of the offence which included that while travelling away from the town in which the offence had been committed the accused pulled up at a garage to fill his car with petrol and left without paying for it. If the court here was not satisfied that the original offence . corresponded to an Irish offence, it could not go on to conclude nevertheless that there was an offence of theft disclosed on all the known facts contained in the request and that such offence corresponds to one, say, under s. 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and that therefore an order for extradition could be made in relation to the actual offence charged. That would in my view make a nonsense of the reason for the correspondence/double criminality rule, whose purpose is to ensure that a person will not be prosecuted and punished for actions which in this State are not regarded as criminal or give rise to a criminal offence.*

[74] *T.K.E. is not charged in the indictment with removing the children from the United States of America. She is charged with intentionally and knowingly retaining the children, etc. There is no reference to taking them out of that jurisdiction. One could summarise by saying that she is charged with failing to comply with the child custody order on the 3rd April, 2005. In my view if she were to have done just that on the 3rd April, 2005, in this jurisdiction, she would not have committed any offence here, even though she would undoubtedly be exposed to an application for*

her attachment and committal for being in breach of the child custody order. She would certainly not be amenable to a charge under s. 16 of the Act of 1997 which depends for its existence on the taking of the child or children out of the jurisdiction."

67. The decision in *T.K.E* was specific to its own facts. It alleged that specific offending conduct had occurred on an identified date, namely the 3rd April, 2005, in which *T.K.E.* "*intentionally and knowingly retained [the children] when [she] knew that the said retention violated the express terms of an order of a court ...*" It made no reference to such conduct involving a removal of the children concerned from the United States, or retention of the children concerned (who had been in the United States) outside of the United States. It simply alleged retention of the children in unspecified circumstances where other than that it was in violation of a court order and confined that limited allegation to a single specific date. In contrast, in the present case the temporal parameters of the indictment were considerably wider. It alleged that the offending conduct had occurred "*on or about August 7, 2018 and continuing to the date of Indictment.*" Further, unlike in the *T.K.E* case, the form of retention alleged in the indictment in the present case is stated with specificity. It is alleged that MCTW "*did retain two minor children **outside the United States**, with the intent to obstruct the lawful exercise of another person's parental rights*" (emphasis added). Accordingly, the offending conduct alleged in the two cases was manifestly different, and there was a legitimate basis on which to seek to distinguish them as the trial judge proceeded to do.
68. I am therefore satisfied to uphold the decision of the trial judge. It seems to me that he addressed the issue of correspondence correctly and I find no error in his approach. Accordingly, I reject the complaints in Grounds of Appeal No's II to VI inclusive.

Conclusion

69. I would dismiss the appeal.