

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2022] SC EDIN 38

E52/21

DECISION UNDER SECTION 78(4)(b) OF THE EXTRADITION ACT 2003

by

SHERIFF N McFADYEN

in the extradition application by

THE LORD ADVOCATE

representing THE UNITED STATES OF AMERICA

Applicant

against

NICHOLAS ROSSI otherwise known as ARTHUR KNIGHT

Requested Person

Applicant: Harvey, AD, Gareth Reid; Crown Agent
Requested Person: Bovey KC; Public Defence Solicitors' Office

Edinburgh, 11 November 2022

Introduction

[1] The United States seek the extradition of Nicholas Rossi, who they say is known by various other names, including Arthur Knight, for trial in the State of Utah on a charge of rape. This is the initial stage of the extradition hearing under section 78 of the Extradition Act 2003. At the commencement of the hearing I answered the questions in section 78(2) (as regards the receipt of appropriate documentation) in the affirmative and I accordingly proceeded to section 78(4)(a), which requires the sheriff, as the appropriate judge, to decide

whether the person appearing or brought before him is the person whose extradition is requested. In terms of section 78(5) that question is to be determined on a balance of probabilities.

[2] The advocate depute, who appears for the Lord Advocate and is conducting the proceedings on behalf of the United States and Mr Bovey KC, who represents the person who is appearing before me, agreed that I should hear evidence on the question whether he is in fact the person whose extradition is requested, that is whether he is the man known as Nicholas Rossi who is accused of rape in Utah. For convenience I will at this stage refer to the person appearing before me as Arthur Knight, the name by which he chooses to be known. The hearing has not been concerned with whether Mr Knight should be extradited, far less any question of his guilt, or even in respect of the quality of the evidence against Nicholas Rossi: this hearing is concerned solely with the question whether Mr Knight is the person whose extradition is sought as the accused person in the proceedings in Utah and who is known as Nicholas Rossi. The question whether he should be extradited will be decided later, if I find that he is that person.

[3] I heard evidence on behalf of the Lord Advocate from two staff of the Intensive Care Unit at the Queen Elizabeth University Hospital in Glasgow, charge nurse Ruth Keating and consultant Dr Robert Hart, who both treated Mr Knight there when he was seriously ill with COVID pneumonitis in late 2021; from police constables Jamie Crombie and Shannon McGill, who attended at the same hospital, where Mr Knight was still being treated on 13 December 2021, to apprehend Mr Knight if they were satisfied as to his identity as the requested person; from detective constables Lorn Gibson and Zahra Pirmohamed, who took fingerprint impressions from Mr Knight while he was detained in prison at a later date; from two Tenprint fingerprint examiners, Lisa Davidson and Anita Vezza who examined

these fingerprint impressions against other fingerprint impressions said to relate to Nicholas Rossi; from Cindy Aze, a registrar of births, deaths and marriages for Bath and North East Somerset as regards the names and other details on Mr Knight's marriage certificate, relating to his marriage to Miranda Knight, including that his father's name was unknown; and from Julie Welsh, a GP practice manager from Whitchurch in Bristol as regards names used by Mr Knight and information about the health of his parents. I heard evidence on behalf of Mr Knight from him and from his wife Miranda Knight.

[4] I was entitled under section 202 of the Act to receive and consider the documents provided by the United States in January 2022 as part of the extradition request and supporting paperwork, and these included what were described as known photographs and fingerprints of Nicholas Rossi. I am entitled – but not required - to proceed on the basis that they are his photographs and fingerprints. The photographs comprised five head or head and shoulders shots and two photographs of tattooed arms, namely the left upper and forearm, which showed a number of tattoos, including an anchor and the right upper arm which showed two distinctive tattoos, the upper one having the appearance of a coat of arms featuring what looks like open books in each quarter around a red St George's cross and, below the coat of arms, a single wing, which could be an angel's wing.

[5] Better quality copies of the same photographs and what appear to have been better quality fingerprint impressions were the subject of an Interpol Red Notice issued on behalf of the United States on 4 October 2021. That document does not have any evidential status but I was invited to have regard to the evidence of witnesses who had considered these better quality photographs on the basis that I could see for myself that these were obviously better quality copies of the same photographs which were admissible under section 202. I was not in a position to make the same assessment as to the fingerprint impressions, since

that required expertise and, although the Tenprint fingerprint examiners had felt able to identify all ten of these impressions as identical to the ten finger and thumb impressions provided by Mr Knight in prison in Scotland, it was accepted that I could not place reliance on the impressions in the Red Notice or on that identification.

[6] In order to establish the identity of Mr Knight as the person whose extradition is requested the Lord Advocate sought to rely on fingerprint comparison between the prison prints and the impressions which were provided with the extradition request and it was submitted that that comparison could itself prove identification on the balance of probabilities (under reference to *Prendi v the Government of the Republic of Albania* [2021] EWHC 2656 (Admin) at [68] (*Prendi No 2*)). Both Tenprint examiners had positively identified the impressions of two fingers – the left forefinger and the left thumb - and Miss Vezza also identified the right forefinger, as those of Mr Knight.

[7] I was invited to consider the identification by witnesses of photographs provided by the United States, but also to make my own assessment of the photographs and in particular the third photograph from the left on the top line of photographs, taken against a bright blue background (photograph number 3), as giving an identifiable likeness of Mr Knight.

[8] I was invited to have regard to the evidence of witnesses as to seeing and describing tattoos as evidence identifying Mr Knight as the person whose extradition is requested on the basis of my own consideration of the photographs of the tattoos and comparison of these with the evidence of the witnesses.

[9] Additionally, evidence of the use of different names by Mr Knight as shown in the marriage certificate and GP records was said by the Lord Advocate to amount to repeated use of aliases in terms strikingly close to the name of the person whose extradition was requested (and who had also used similar such aliases) and it was submitted that could

provide further confirmation of the fingerprint and photographic evidence (under reference to *Prendi (No 2)* at [66] and [68]).

[10] Mr Bovey invited me to reject the fingerprint evidence because I could not be satisfied as to the provenance of the questioned prints examined by the Tenprint examiners, that is that they were the prints provided with the extradition request and also because their evidence was general in character. Mr Knight for his part accepted in evidence that the prints which were examined were all his prints, but he said that the questioned prints were in fact prints taken from him by an NHS worker called Patrick while he was in intensive care in October 2021 and then passed to prosecutors in the United States, whence they entered the relevant files. Mr Knight made, in his evidence, in this connection and more generally imputations on the character of the prosecutor in Utah and members of his staff. Being unsupported by any evidence, these fall to be dismissed as scandalous.

[11] I have no valid or coherent reason to doubt that the prints examined were those provided by the US authorities and that these are, as they assert, prints of Nicholas Rossi who is charged in their proceedings and I reject Mr Knight's explanation as to how his prints came to be taken while he was in hospital, and inserted in the relevant files as implausible and fanciful. The identification of the limited, but still perfectly adequate number of fingerprint impressions in the extradition papers was made confidently by officers with relevant experience and I am satisfied that at least two of the questioned prints bear the unique characteristics of Mr Knight and that they are therefore his fingerprints.

[12] Mr Bovey invited me not to rely on the photographic evidence, the photographs being unclear and identification evidence being notoriously unreliable. Mr Knight's position in evidence as to the photographs seemed less than clear. He talked about transposed images of himself which had features of him and in the case of photograph number 3,

elements of him, but said that they were not photographs of him. Not only were the photographs of tattooed arms not of him, but he had no tattoos prior to being admitted to hospital in Glasgow. The tattoos which he found on his arms were not identical to those in the photographs and they faded away over time. To what extent he meant that other photographs had been manipulated in some way or there were simply similarities as well as differences in appearance was not entirely clear from his evidence.

[13] I am, however, entitled to rely on the photographs as being photographs of Nicholas Rossi whose extradition is sought and I am entitled to and I do reject Mr Knight's evidence to the extent that he is suggesting manipulation of photographs by US authorities or that they are otherwise in some way unreliable. I accept that these are photographs of Nicholas Rossi, the person whose extradition is requested. I am entitled to rely on the evidence of witnesses who have met Mr Knight, including the hospital witnesses charge nurse Keating and Dr Hart who saw him regularly and appeared to identify him confidently from the photographs, as well the evidence of the two police officers, constables McGill and Crombie, who attended at the hospital on 13 December 2021 and my own assessment in particular of photograph number 3. I am satisfied on the basis of all these witnesses and my own assessment that Mr Knight is indeed shown in the photographs, and in particular photograph number 3. Identification by fleeting glance may be notoriously unreliable, but this was identification by reference to photographs which is an acceptable method of identification.

[14] Mr Bovey suggested that I could not rely on the evidence of those who had seen tattoos on Mr Knight's arms as to similarities with those in the extradition request. I have to observe that I am somewhat baffled as to why the court was not provided with photographs of Mr Knight's arms, since that would no doubt have assisted greatly in determining

whether the tattoos were indeed the same, but I have to proceed on the basis of the evidence that both parties have chosen to present and in this case that is photographs of tattoos on what I accept, on the basis of the US paperwork, are the arms of Nicholas Rossi, taken at some indeterminate time in the past and the descriptions given by witnesses and indeed the evidence of witnesses, as to their examination of the photographs.

[15] The left arm tattoos are not said to be particularly distinctive other than that of an anchor and it is common knowledge that the anchor is a very traditional and common tattoo. The right arm tattoos are much more distinctive: the tattoo with the appearance of a coat of arms and, below it, a single wing. The evidence of charge nurse Keating was particularly telling. She recalled a tattoo which looked like a coat of arms with a red cross and four areas within it and she was sure that he had a tattoo of an angel wing as well. These were both upper arm tattoos. These were good descriptions of the distinctive tattoos shown in the US paperwork and, when she was shown the photographs, she said that the upper tattoo on the left arm (which included the anchor) looked familiar, although it appeared faded and the tattoo on the upper right arm looked like the one she saw on Arthur Knight (although I did not note her to specify whether that was by reference to the coat of arms or angel's wing or both). Dr Hart did not recall the particular appearance of tattoos when giving evidence. He recalled being shown photographs by the police and said that the tattoos that he saw matched the ones which he said he had described to the police, although he thought they looked faded and less coloured than those shown in the photographs, but I accept that his police statement does not record that he described the tattoos to the police or that he told them they matched the photographs and I do not place reliance on his evidence as regards identification of tattoos. When constable McGill saw Mr Knight in the hospital on 13 December 2021 she noticed a tattoo of what looked like a

wing on his right arm, going towards the elbow and constable Crombie gave a similar description of the wing tattoo which looked like the relevant photograph in the Interpol Red Notice.

[16] I am satisfied that there is powerful evidence of similarity of quite distinctive tattoos being seen on Mr Knight which resemble in detail the distinctive tattoos on the photographs of Nicholas Rossi. Mr Knight's evidence as to how the tattoos that were seen by witnesses got there – that he regained consciousness to find that he had been tattooed while in a coma in the intensive care unit – was equally as, if not more implausible and fanciful than his evidence about being fingerprinted by Patrick.

[17] I am satisfied that Mr Knight had tattoos when he was admitted to hospital and that there was such similarity between his tattoos and those in the photographs of Nicholas Rossi that it is likely that he is indeed Nicholas Rossi. I do not require to decide whether I could be satisfied on a balance of probabilities that he is thus identified on the tattoos alone, but the evidence is certainly powerful evidence when taken alongside the evidence of fingerprints and facial photographs.

[18] I pause to observe that it is disappointing that relatively poor copies of photographs and, it would appear of fingerprint impressions, both from the United States had to be relied on by the court. The relevant authorities had been on notice since at least December 2021 that Mr Knight disputed identification, yet they had not ensured that better quality images were available as evidence - and indeed ultimately required to rely on fingerprint examination of a poor quality document where better quality prints were available. The only obvious disadvantage was, however, to the Lord Advocate.

[19] As regards changes of name, I do not accept Mr Knight's evidence that this was just about getting married and addressing adverse childhood experiences; while I have no

reason to doubt the sincerity of Miranda Knight's evidence as to her understanding of why Mr Knight wished to change his name, her information about his reasoning came entirely from him. In general I do not doubt the sincerity of her evidence, although I was not entirely convinced that she had necessarily met him as long ago as 2012.

[20] I am not sure that it is actually correct to say, as the advocate depute suggested, that the names used by Mr Knight in the United Kingdom were strikingly close to the name of the person whose extradition was requested, because the United States request proceeds of course on the basis that Mr Knight and Mr Rossi are one and the same person and therefore includes names by which it is admitted Mr Knight has been known. Setting to one side, therefore, the names generally by which it is accepted Mr Knight has been known in the United Kingdom, the only part of his name which is strikingly similar to the names used by the man known as Nicholas Rossi is the forename Nicholas. If I reject Mr Knight's explanation for his changes of name, including the dropping of Nicholas as his first name, that is certainly an adminicle of evidence which I think can properly be considered. I do reject Mr Knight's explanation. It seems to me highly suspicious that the change of names went through a number of permutations. That seems to me consistent with someone who was hiding from someone or something. It is therefore an adminicle of evidence, that is, it is a relatively minor supporting piece of evidence which supports the evidence as to identification, but does not amount to freestanding proof of identification.

[21] I do not accept the requested person's evidence that he has never been in the United States and that he is not the person whose extradition is requested. Although ultimately of limited relevance to my decision, other than bearing adversely on the credibility of Mr Knight as a witness, I did not accept his evidence that he had effectively not provided the information which was contained in the GP records about the health of his parents – that

was information which, if it was provided by him, contradicted the statement in the marriage certificate and in his own evidence that his father was unknown.

[22] I am ultimately satisfied on the balance of probabilities, by the evidence of fingerprint, photographic and tattoo evidence, taken together, supported by the evidence of changes of name, that Mr Knight is indeed Nicholas Rossi, the person sought for extradition by the United States. I would have been prepared to accept the fingerprint evidence alone as sufficient for that purpose and equally I would have been prepared to accept the photographic facial identification evidence and tattoo evidence taken together as sufficient for that purpose.

[23] I therefore require to answer the question in section 78(4(a) of the Act in the affirmative: the person appearing before me is Nicholas Rossi, the person whose extradition is requested by the United States.