Judgments

Ejinyere v Government of the United States of America

[2018] EWHC 2841 (Admin)

Queen's Bench Division (Divisional Court)

Lord Burnett CJ and Garnham J

31 October 2018

Judgment

Malcom Hawkes (instructed by **Hodge, Jones & Allen**) for the **Appellant**

Mark Summers QC and Daniel Sternberg (instructed by **the CPS**) for the **Respondent**

Hearing date: 4th October 2018

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Approved Judgment

THE LORD BURNETT OF MALDON AND THE HON MR JUSTICE GARNHAM

Introduction

1. Charles Ejinyere appeals against a decision of District Judge Coleman, sitting at Westminster Magistrates' Court on 26 July 2017, to send his case to the Secretary of State for the Home Department for his decision whether to order his extradition to the United States of America under Part 2 of the Extradition Act 2003 ("the 2003 Act"). The USA is a category 2 territory under the Act. On 20 September 2017 the Secretary of State ordered his extradition.

2. Permission to appeal was granted on two grounds:

i) whether the judge was wrong to hold that the forum bar in section 83A of the 2003 Act did not prevent Mr Ejinyere's extradition;

ii) whether his extradition would be unjust or oppressive by reason of his physical or mental condition; and so required his discharge under section 91 of the 2003 Act.

The History

3. The appellant is subject to a Part 2 Accusation Extradition Request issued on behalf of the Government of the United States of America by the District Court for the Western District of Michigan. He is wanted for trial on 12 counts, alleging the commission of a conspiracy to de-

fraud the US government, wire fraud, making false, fictitious or fraudulent claims against the government and aiding and abetting the same, along with aggravated identity theft and abetting the same. His co-defendant, a man named Oghenevwakpo Igboba, was convicted on 17 September 2018 of conspiracy to defraud the US government, one count of wire fraud, eight counts of making a false claim and eight counts of aggravated identity theft. He will be sentenced on 29 January 2019.

4. The allegation against the appellant is that, together with Mr Igboba and unidentified co-conspirators, he obtained identifying information of US citizens, such as social security numbers and dates of birth, and other personal data including income information, in order to file false tax refund claims with the US Internal Revenue Service ("IRS").

5. It is alleged that the stolen details were used to prepare, and then to file electronically, fraudulent tax returns. As a result, the US Department of the Treasury made payments into bank accounts controlled by Mr Igboba. The total of the refunds claimed is put at more than US$930,000 and the total amount obtained by the conspirators was over $426,000.

6. On 21 February 2017, the appellant was arrested at his home address pursuant to an extradition request. He was brought to Westminster Magistrates' Court that day and bail was refused. Bail was eventually granted by the High Court on 3 July 2018.

7. The appellant is a Nigerian national aged 33. He has a valid spousal visa to live in the United Kingdom. He is of good character. Although he and his Portuguese wife divorced in 2017 and his spousal visa expired in April 2018, as the spouse of an EEA national in full time employment, he retains a residual right to remain in the United Kingdom. He is in a relationship with a woman called Precious Akpoviro who at the time of the hearing before the judge had applied for United Kingdom citizenship, and who has now been granted it.

The District Judge 's Decision

8. The extradition hearing took place before District Judge Coleman on 22 June 2017.

9. The judge provided a detailed written decision rejecting the appellant's arguments and finding that there were no bars to his extradition. She considered, first, the argument that it would be oppressive to extradite him because of his mental health. She considered the written reports and oral evidence of Dr Tom Grange, a clinical psychologist. She also considered the evidence of Dr Alan Reid, a consultant forensic psychiatrist. The judge also heard evidence from Precious Akpoviro. Miss Akpoviro described her own medical condition and said that the appellant was a great help and support to her.

10. There was no difference between the parties as to the law in relation to section 91. The judge observed that the challenge turned on the facts.

11. As to the forum bar, the judge held that this was a case where forum was properly arguable. She noted that the Government of the United States of America accepted that "a substantial measure" of the appellant's relevant activity took place in the United Kingdom and that the "threshold is therefore met to consider the provisions." We address below the judge's consideration of the specified matters and her overall evaluation of them.

Discussion

12. It is common ground that the single question for the Court on appeal is whether or not the judge was wrong (*Poland v Celinski* [2015] EWHC 1274 (Admin) at [24]; *Love v USA* [2018] EWHC 172 (Admin) at [23] to [26]).

13. It is convenient to deal with the forum bar first and then the section 91 challenge.

The Forum Bar - section83A

14. As explained by this Court in *Love v USA* [2018] EWHC 172 (Admin), the underlying aim of the forum bar contained in section 83A is to prevent extradition where the offences in question can be fairly and effectively tried in the UK and it is not in the interests of justice, as narrowly defined in the section itself, that the requested person should be extradited. The court in *Love* continued:

"But close attention has to be paid to the wording of the statute rather than to short summaries of its purpose or to general Parliamentary statements. The forum bar only arises if extradition would not be in the interests of justice; section 83A(1) . The matters relevant to an evaluation of "the interests of justice" for these purposes are found in section 83A(2)(b) . They do not leave to the court the task of some vague or broader evaluation of what is just. Nor is the bar a general provision requiring the court to form a view directly on which is the more suitable forum, let alone having regard to sentencing policy or the potential for prisoner transfer, save to the extent that one of the listed factors might in any particular case require consideration of it."

15. S83A provides:

"(1) The extradition of a person ("D") to a category 2 territory is barred by reason of forum if the extradition would not be in the interests of justice.

(2) For the purposes of this section, the extradition would not be in the interests of justice if the judge -

(a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and

(b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.

(3) These are the specified matters relating to the interests of justice -

(a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;

(b) the interests of any victims of the extradition offence;

(c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;

(d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;

(e) any delay that might result from proceeding in one jurisdiction rather than another;

(f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to -

(i) the jurisdictions in which witnesses, co-defendants and other suspects are located, and

(ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;

(g) D's connections with the United Kingdom.

(4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 2 territory concerned.

(5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.

(6) In this section "D's relevant activity" means activity which is material to the commission of the extradition offence and is alleged to have been performed by D."

16. By section 83B(1) :

"The judge hearing proceedings under section 83A (the "forum proceedings") must decide that the extradition is not barred by reason of forum if (at a time when the judge has not yet decided the proceedings) the judge receives a prosecutor's certificate relating to the extradition."

17. It is agreed in the present case that a substantial part of the appellant's activity was performed in the United Kingdom and accordingly that subsection 2(a) is satisfied. The issue is therefore whether extradition should not take place having regard to the specified matters in subsection 3. As to those, it is agreed, in the light of this court's judgment in *Scott v USA* [2018] EWHC 2021 (Admin), that there is no predetermined hierarchy between those matters.

18. It was also held in *Scott* that section 83A(3)(c) is only "in point" if the prosecutor has expressed the belief that the United Kingdom is not the most appropriate jurisdiction in which to conduct the prosecution. However, that does not mean that, where it is found that there is unlikely to be a prosecution if the appellant is not extradited, that fact is irrelevant; it may have a bearing on one of the other specified matters.

The specified matters

19. Against that background, we turn to consider the judge's approach to the specified matters in the present case.

(a) *The place where most of the loss or harm took place*

20. In addressing this issue, the judge acknowledged that "all or a very substantial measure of the relevant activity took place in the UK" but held that "it seems to me that the harm was felt exclusively in the USA". No criticism is made of that conclusion. We agree. The judge was correct in her approach to section 83A(3)(a). We add that *Love* indicated at [28] that this factor will usually be a very weighty one.

(b) *The interests of any victims of the extradition offence*

21. The judge said that:

"...as the overall offending and the effect of the offending was felt in the US it seems to me that the interests of victims are best served there. I have not been told of any actual victims. It seems totally unreasonable to me that witnesses would have to travel to the UK to give evidence, which would presumably be both inconvenient and expensive, and would also be unable to observe and participate in all pre-trial proceedings and actual trial proceedings. The interests of the witnesses clearly favour trial in the US."

22. Mr Hawkes submits that the judge was wrong to speculate about the cost and inconvenience of witnesses travelling to the UK. In fact, he says, given the fact that this case would turn on documentary evidence, there would be little need for oral evidence. Such oral evidence as was required could be adduced via video-links. Further, he argues that given the appellant's declining mental health the prospect of the appellant being fit to stand trial would be increased if the trial took place in the UK and that was in the victims' interest.

23. Mr Hawkes may be right that in a case of this sort much of the prosecution evidence would be adduced via documents, but the extent to which oral evidence will be required would depend, inevitably, not only on how the case was prosecuted but also the way in which it was defended. In the absence of much more detail about the likely structure of a prosecution it is difficult to say whether, and if so what, evidence might be given via video-link. The victims in this case were those whose data were used and then the US Government and US taxpayers. The critical feature here is that there is an obvious interest, given the victim of the alleged fraud was the US government and taxpayers, that the offences should be prosecuted publicly in a US court, subject to US law and, if there is a conviction, punishment.

24. We regard the argument that the appellant's health is such that the interests of the victims would be better served if there was no extradition as misplaced. There can be no doubt that were the appellant to be extradited and tried in the US, he would receive adequate medical and psychiatric treatment to ensure he received a fair trial.

25. In our view the judge was right to regard this as a factor in the Respondent's favour.

(c) *Any belief by a prosecutor that the UK is not the most appropriate jurisdiction*

26. The judge correctly recorded that no such belief has been expressed. The effect of this court's analysis in *Scott* (which was not available to the judge) is that in the absence of such a belief being expressed, subsection 3(c) has no application. It follows that the judge erred in taking this matter into account.

(d) *...whether evidence...is or could be made available in the UK*

27. The judge held:

"...the witnesses live in the United States whilst they could in theory attend a UK court to give evidence I am unaware there are any health issues or family responsibilities which might prevent them from so doing. I am told that all of the witnesses who would be needed to give evidence concerning US IRS systems, documents and procedures in the US are generally unavailable to attend trial in UK.

All of the documentary evidence in this matter is in the United States. The United States must seek and obtain permission from a US Judge before it may disclose grand jury material to a foreign court or a foreign prosecutor. I am told US prosecutors have gathered approximately 165,000 pages of documents and 193,000 items from computer, mobile phone and data storage devices. The process would no doubt involve the use of mutual legal assistance by the prosecuting authorities and the defence would be obliged to obtain assistance by way of Let-

ters Rogatory (of request). Such letters are not pursuant to any treaty under therefore effectively unpredictable and slow."

28. Mr Hawkes argued that the judge erred in finding that evidence could not be made available. We do not read the judgment as indicating so bald a conclusion. We accept that the difficulties involved in obtaining the attendance of witnesses might be substantially addressed by the use of video links, although, as Mr Summers QC fairly observed, the task of adducing evidence by such means from witnesses who need to speak to large quantities of documentary evidence is seldom easy.

29. The judge was entitled, in our view, to recognise that adducing live evidence in the UK would be less straight forward than in the US, to note the fact that the documentary evidence was extensive and to conclude that the process of obtaining the evidence was likely to be less certain than in the US.

30. On the related issue raised by section 83A(4), namely the desirability of not requiring the disclosure of material which is subject to restriction on disclosure, in the US, we can see no error in the judge's approach. She observed that the US authorities must obtain permission from a US judge before disclosing grand jury material. That is correct. But she was not suggesting that that would be impossible or even problematic. She was simply noting that this was a process that would have to be completed. As Mr Summers QC puts it "The judge was entitled not to ignore" this factor entirely.

31. In our view, the proper conclusion on specified matter (d) was that evidence necessary to prove the offence was likely to be made available in the UK; but that the process to achieve that end was likely to be complicated and less speedy than in the US. That, to the extent not covered by any other specified factor, would go to weight.

(e) *Delay*

32. The judge ruled:

"...if a trial were to be undertaken in this country substantial delay is inevitable. This cannot be in the interests of justice. The Government points out that the Sixth Amendment to the US Constitution guarantees the requested person a speedy and public trial within 70 days of his arraignment pursuant to the Speedy Trial Act. (unless exclusions apply)

The very large quantity of material referred to above has taken prosecutors 16 months to review the documentary evidence and prepare the material for trial (sic). US prosecutors believe it would take considerable period of time for UK authorities to review the documents and records to understand the evidence and prepare for trial."

33. Mr Hawkes contends that the judge was wrong to conclude that a trial in England would result in inevitable delay as opposed to the appellant's ability to enjoy a trial within 70 days, as guaranteed in the US. He argued that there would be no delay because those acting for the defence would have essentially the same task here as in the US.

34. We reject that argument. It may be right that the time required to prepare the defence would be similar in the US and England. However, if the matter was tried in England, prosecutors would need considerable time to consider the substantial volume of material, a task which has been under way for some time in the US. The result, in our view, is that it is highly likely that proceedings would be concluded much more swiftly in the US than if extradition were refused and the appellant prosecuted here.

35. Accordingly, the judge was right to regard this as a factor in favour of extradition.

(f) *All proceedings in one jurisdiction*

36. The judge said:

"I am told that there is one identified co-defendant and a number of as yet unidentified potential co-conspirators. It is clearly desirable for all of the prosecutions to take place one jurisdiction."

37. Mr Hawkes argues that only one co-defendant had been identified to date and it is unlikely that any more would be identified in the future. He submits that because one co-defendant had been tried and convicted, there is now no disadvantage in the appellant being tried in a different jurisdiction. He adds that the appellant's learning difficulties or learning disability meant that a joint trial would have been impossible in any event.

38. We reject those contentions. First, the advantage that flows from having all prosecutions in one jurisdiction is not limited to the possibility of trying all co-defendants at the same time. There are also benefits from trying all co-defendants under the same law, before the same courts and ensuring that all those convicted are sentenced under the same sentencing regime. Secondly, we do not accept that the appellant's difficulties would have necessitated his being tried separately, either in the US or here. Both countries have arrangements in place to accommodate such difficulties and, at least in this jurisdiction, efforts would be made to try all defendants together even if that meant proceeding at trial at the pace of the slowest.

(g) *The Defendants connection with the UK*

39. The judge observed that the appellant is a United Kingdom citizen and his life and connections are here. He has a partner here.

40. She was mistaken in the former assertion; the appellant is a citizen of Nigeria. He has, so we were assured by Mr Hawkes, a right to remain pursuant to the Immigration (European Economic Area) Regulations 2016/1052. But he is not a British citizen. He has lived in the United Kingdom for 12 years. In our judgment, whilst those connections with the United Kingdom support the appellant's case, they are not especially weighty.

41. This court considered in *Love* the meaning of the word "connection" in subsection 3(f). At [40] the court said:

"No exhaustive definition can be attempted judicially, but "connection" is closer to the notion of ties for the purposes of bail decisions. It would cover family ties, their nature and strength, employment and studies, property, duration and status of residence, and nationality. It would not usually cover health conditions or medical treatment, unless there was something particular about the nature of the medical condition or the treatment it required, that connected the individual to treatment in the United Kingdom."

42. At [43] the court emphasised the potential importance of the strength of the connection to the United Kingdom in evaluating this criterion:

"What persuades us that, in those circumstances, [the judge's] decision was wrong, is the nature of Mr Love's connection to the United Kingdom. By itself, the fact that he is a British national, long resident here, with a girlfriend, and engaged in studies, would not have persuaded us that the decision was wrong. But there is a particular strength in the connection to his family and home circumstances provided by the nature of his medical conditions and the care and treatment they need. This is not just or even primarily the medical treatment he receives, but the stability and care which his parents provide. That could not be provided abroad. His entire

well-being is bound up with the presence of his parents. This may now have been enhanced by the support of his girlfriend. The significance of the breaking of those connections, as we come to next, demonstrates their strength."

43. The appellant does have some significant connections to the United Kingdom. However, they are not of the same nature or degree as those of Mr Love. Nor are they of an equivalent intensity. Certainly, the nature of the appellant's medical condition (as to which see below) and treatment does not demonstrate any special connection to his family and home circumstances which could not be provided abroad. His suggested cognitive difficulties are unrelated to those connections. There is no evidence that his depression is extradition-specific, rather than prosecution-specific. Accordingly, whilst this factor weighs in the appellant's favour, it is far from an overwhelming consideration.

The Balancing Exercise

44. The judge then carried out a balancing exercise as to whether extradition should be barred by reason of forum. She said:

"Having considered all of the matters contained within the section I have carried out a balancing exercise as to whether extradition should be barred by reason of forum if extradition would not be in the interest of justice.

Factors I have identified in favour of trial in the USA:

- all the harm/loss occurred in the USA
- the interests of the victims lie in the USA
- the desirability and practicability of all prosecutions taking place in the USA
- the evidence is ready and the government of the USA is ready to proceed to trial
- the inevitable delay of a trial taking place in the UK would be significant and would be contrary to the interests of both the defendant and of the victims. The quality of evidence would be diminished by the passage of time.

The only factor I can identified as militating towards trial in the United Kingdom is the defendant's connections with this jurisdiction. They are significant and extradition to the United States would amount to an interference of the defendant's article 8 rights. Even if the requested person were granted bail pending any trial there would be restrictions on his ability to return home to the United Kingdom and he would therefore be separated from his family for some time.

Having carried out the balancing exercise I find the factors, and the weight I have attached to each one, in favour of trial in the USA outweigh those which may militate towards trial in this jurisdiction. I do not find that extradition should be barred as not being in the interests of justice and I reject this challenge."

45. As we have explained, in our view the judge erred in relation to subsection 3(c), the belief of a prosecutor, but also in approaching the balancing exercise on the basis that the appellant is a British citizen. Those may be thought broadly to cancel each other out; but on any view her overall decision cannot be said to be wrong. On the contrary, the circumstances of this appellant point firmly to the conclusion that he should be tried in the United States of America.

46. Only one of the specified matters falls on the appellant's side of the balance, his connection with the United Kingdom. Whilst significant, that was not an especially weighty factor in this appellant's favour. All the other considerations fell on the other side of the scales. A number of them were very weighty, notably the fact that the loss was suffered in the US, the likely delay if a prosecution were to take place in England and the desirability of all prosecutions taking place in the same jurisdiction. In our judgment, subject to the question of oppression, the interests of justice require that the extradition should take place.

Unjust or oppressive - section 91

47. Section 91 provides as follows:

"Physical or mental condition

(1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.

(3) The judge must--

(a) order the person's discharge, or

(b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

48. In *South Africa v Dewani,* [2012] EWHC 842 (Admin), Sir John Thomas, PQBD said this at [73] and following:

"73. In our view, the words in s91...set out the relevant test and little help is gained by reference to the facts of other cases...The term "unjust or oppressive" requires regard to be had to all the relevant circumstances, including the fact that extradition is ordinarily likely to cause stress and hardship; neither of those is sufficient. It is not necessary to enumerate these circumstances, as they will inevitably vary from case to case as the decisions listed at paragraph 72 demonstrate. We would observe that the citation of decisions which do no more than restate the test under s.91 or apply the test to facts is strongly to be discouraged...

76 In such a case what is unjust or oppressive is fact sensitive. Take the case of a person who is recovering from an acute injury or physical illness where the prognosis for recovery is certain. In such circumstances, making an immediate order would be unjust or oppressive if there was a real risk to life and a short delay would obviate the risk. There is virtually nothing by way of detriment to the interests of justice in such a delay.

77 The test is more difficult to apply where the quantification of the degree of risk to life is less certain and the prognosis is also less certain. In such a case, the interests of justice in seeing that persons accused of crimes are brought to trial have to be brought into account."

49. Having set out a summary of the medical evidence she had heard, the judge said this:

"DR GRANGE - PSYCHOLOGIST

Dr Grange has completed two reports for these proceedings. He is a chartered clinical psychologist specialising in the area of children adolescents and families. His main report is dated 4 April 2017 and his addendum report, completed after he had seen report of Dr Reid, psychia-

trist, is dated 6 June 2017. In addition Dr Grange attended the extradition hearing and gave oral evidence and was cross examined. I do not propose to set out all of his evidence as it is all contained in the reports. Dr Grange formed the view that the requested person was displaying significant depression and anxiety and, based on his self-reporting, were thoughts associated with paranoia.

The self-reporting factor is important. Dr Grange was unable to independently corroborate any of the information provided from either the requested person or his partner and therefore his findings are dependent on whether or not that self-reporting is both truthful and accurate. Dr Grange reports that there was a high degree of consistency between the cognitive assessment results and those on the Vineland Adaptive Behaviour Scale and therefore the results of the cognitive assessment was probably genuine.

On meeting the requested person Dr Grange was not of the view that he presented with a high risk of suicide. Dr Grange recommended that the requested person is assessed by a psychiatrist specialising in adult mental health for a definitive view.

Dr Grange reported the requested person's cognitive functioning at a very low level potentially within the learning disability range. He also assesses the requested person's cognitive functioning as so low as to affect his ability to understand proceedings. Cross examination is also likely to be problematic.

In cross-examination Dr Grange conceded that he had changed his view that the requested person does not have a learning disability but does have learning difficulty stop he also conceded that he is unable to rule out that the requested person is trying to make matters appear worse. Dr Grange said that he had read the reports of Dr Reid and although they did not agree about everything they were "in the same area by the end".

Mr Sternberg on behalf of the government asked Dr Grange if he agreed that the requested person could have done the acts he is accused of. Dr Grange said he had not asked the requested person to use a computer and that he was unable to carry out tests on an iPad at because he was not permitted to take one into prison. Dr Grange was referred to the Government's further information at the foot of page 5 of their further information (that US prosecutors dispute the requested person's claim he was unable to perform essential functions in the fraud scheme. The documentary evidence demonstrates that the requested person is very adept at using a computer and the internet to communicate with others by email, messaging and social media stop he used multiple email accounts and his computer skills to execute critical steps in the fraud. Specifically, the requested person provided his co-defendant with IRS personal identification numbers that were assigned to US taxpayers that would allow him and his co-defendants to electronically file with the IRS fraudulent tax returns in other person's names using the internet) Did concede that a learning difficulty does not prevent an individual from using a computer and that with support and practice the requested person could probably do these things. He accepted that the requested person was probably able to do what he is accused of.

DR REID - PSYCHIATRIST

In summary the report of Dr Reid, a consultant forensic psychiatrist, points out that the evidence for stating that the requested person is suffering from any mental disorder is solely based on his own account at interview as the doctor had not been provided with any documented collateral history from medical records to verify the existence of mental disorder prior to current proceedings.

He said there does not appear to be evidence of severe enduring illness. Dr Reid said that if the requested person's account is accurate, and his symptoms pre-existing his current remand into custody, then the correct diagnosis for him is that of a recurrent depressive disorder; he

reports waxing and waning symptoms of generalised anxiety, obsessive-compulsive symptoms, agoraphobia and panic attacks.

Dr Reid says that given the lack of clarity as to whether or not the requested person's symptoms pre-existing his current incarceration another possibility is that his current presentation is an understandable human reaction to the stress of facing extradition to the United States.

SECTION 91 PHYSICAL OR MENTAL CONDITION

The law on this matter is agreed between the parties and the challenge on this occasion turns on the facts. The argument put forward on behalf of the requested person is that he is cognitively deficient and suffers with a learning difficulty such that it would not be possible for him to do what he is accused of doing. It is asserted on his behalf that he is vulnerable and has been exploited. It is said that he is unable to fully comprehend what he is said to have done is only fit to stand trial with a great deal of assistance and breaks. It is said the extradition would be both bewildering and disturbing for him and that he would be separated from his partner.

I have read the reports very carefully but I do not accept that the physical or mental condition of the requested person is such that it would be unjust or oppressive to extradite him.

I would urge the Secretary of State, if she orders extradition, to ensure that the expert reports of both Dr Grange and Dr Reid accompany the requested person. The further information from the Government of the United States confirms that adjustments can be made at the requested person's trial to ensure that he is able to understand the trial process, to give instructions to his lawyers and to participate effectively in the trial. The further information states that trial Counsel often employ an individual to help with the trial presentation and to help answer the defendant's questions during that trial and it is open to the requested person to ask for that additional help at his trial if it is necessary."

50. Mr Hawkes does not suggest the extradition would be unjust, but he does say it would be oppressive. He makes a number of criticisms of the judge's analysis.

51. First, he contends that the judge was in error in concluding that Dr Grange was unable independently to corroborate any of the information provided from the appellant or his partner and that therefore his findings were dependent on whether or not his self-reporting was truthful and accurate. Mr Hawkes says that in fact Dr Grange had access to corroborative evidence to which he referred in his addendum report, notably some school report and the reports of Dr Reid.

52. Mr Summers QC submits in response that the evidence of the two doctors is "very caveated" and dependent on self-reporting. He says that there is no corroboration of what they say. Further, he says that the appellant's presentation before the judge is inconsistent with the fact that he had been living independently in the United Kingdom since 2006. He says it is also contrary to the fact that he felt capable of enrolling for a degree course with the Open University and to the evidence served by the US in support of the request.

53. In our judgment the appellant's criticism of this aspect of the judge's reasoning is misplaced. Dr Grange was, as he acknowledged, very dependent on the appellant's self-reporting. The reports of Dr Reid were similarly dependent on what the appellant told him and the coincidence of some of his opinions with those of Dr Reid, which were based substantially on evidence from the same source, namely the appellant, did not greatly assist. The support that could be obtained from an incomplete set of school reports was very modest indeed. In the light of the evidence before her about the appellant's earlier life, it seems to us that the judge was entitled to reach the conclusions she did on this issue.

54. Secondly, Mr Hawkes argues that Dr Grange did not, as stated by the judge, concede '*that he is unable to rule out that the requested person is trying to make matters appear worse'.* He says that in fact, in his oral evidence to the court, Dr Grange said this:

"I am confident he has learning problems. I am not saying that he is exaggerating, but I can't say he isn't. I have to factor in that aspect: feigning, malingering or faking bad, you can never rule that out. When corroborating information comes in, I am more confident because of the corroborating info, here it is somewhat incomplete."

55. We cannot accept that criticism of the judge either. In his first report Dr Reid indicated that the appellant's presentation could be 'affected by issues around secondary gain in relation to the extradition process (i.e. the possibility of deliberately under performing in the hope that this may benefit him in relation to the extradition proceedings)'. In his report Dr Grange said Mr Ejinyere could have deliberately reduced his effort on the cognitive testing and I cannot rule out the possibility that Mr Ejinyere is exaggerating.

56. In our view the judge's paraphrase of the evidence was not unfair and does not support a suggestion that the judge mis-directed herself.

57. Thirdly, Mr Hawkes argues that the judge fell into error in concluding that 'the documentary evidence demonstrates that (the appellant) is adept at using a computer and the Internet to communicate with others by email, messaging and social media. He used multiple email accounts and his computer skills to execute critical steps in the fraud'. Mr Hawkes says that not only is this assessment based upon no more than a rehearsal of the prosecution case, it does not accord with Dr Grange's or Dr Reid's conclusions.

58. We reject that argument also. The appellant's reliance on the reports of Drs Grange and Reid is unconvincing for the reasons just set out. Further, the judge was entitled to conclude that the evidence on which the extradition request was based supports a conclusion that the appellant was sufficiently adept with computers to have been involved with this offending. The evidence from the US authorities was powerful. They said:

"The documentary evidence demonstrates that Mr. Ejinyere is very adept at using a computer and the Internet to communicate with others by e-mail, instant-messaging (chats), and social media He used-multiple e-mail accounts and his computer-skills to execute critical steps in the fraud. Specifically, he provided his co-defendant with IRS personal identification numbers that were assigned-to U.S. taxpayers that would allow him and his co-defendant to electronically file with the IRS fraudulent tax returns in other people's names using the Internet. Mr. Ejinyere also notified his co-defendant by e-mail when fraudulent tax documents were filed with the IRS and that a tax refund would soon be deposited into a bank account controlled by the co-defendant. Further, evidence obtained from one of Mr. Ejinyere's e-mail accounts shows that he is capable of managing his personal affairs using computers and technology. For example, Mr. Ejinyere communicated with First Bank Nigeria and provided that institution with a scanned copy of his Nigerian passport to open a bank account....Federal investigators also found evidence that Mr. Ejinyere knew that what he was doing was illegal and thought he would avoid detection by law enforcement..."

59. Finally, Mr Hawkes argued that the judge's overall conclusion on section 91 was flawed. He says that she should have concluded that extradition and separation from his partner in the United Kingdom would result in a loss of the support he gets at home and so amount to oppression. In our judgment the evidence adduced before the judge simply does not support that conclusion. This case is very far removed from the facts in *Love,* for example, or the sort of dependency which could support such an argument. We reject the suggestion that the judge ought, on the material before her, to have concluded that separation from his partner in the United Kingdom would result in a loss of support of such a nature as to amount to oppression.

60. By way of postscript, Mr Hawkes informed us that the appellant's relationship with Ms Akpoviro is "floundering". That only serves to underline the conclusion reached in the previous paragraph.

Suicide

61. For the purposes of the appeal, the appellant sought to rely upon a report of Dr Bhanot dated 30 August 2018. That evidence post-dates the hearing in the court below and relates to the appellant's current mental state. Without objection, we agreed to admit it pursuant to the principles set out in *Hungary v Fenyvesi* [2009] EWHC 231 (Admin).

62. Dr Bhanot interviewed the appellant and his partner. He concluded that the appellant meets the criteria for a Major Depressive Disorder and is at a high risk of suicide. He said the appellant requires urgent psychiatric assessment, treatment and possible in-patient treatment and monitoring.

63. Mr Hawkes points to Dr Bhanot's conclusions that the appellant's suicide risk is high, due to the presence of factors which are strongly associated with suicide risk. They include recurrent suicidal ideation and decreasing ability to resist voices commanding him to hurt himself, a clear expression of suicidal intent during the assessment, an untreated major depressive episode, reported history of childhood physical abuse, a known increased risk factor for adult suicide, male gender and a history of two previous suicide attempts.

64. Mr Summers QC argues that this analysis relies on self-reporting of previous suicide attempts about which the appellant has either never made any mention at all or about which he has been inconsistent. In any event, he argues, any change in his depression (and therefore his increased suicide risk) is the product of an abrupt cessation of his antidepressant medication following his release from custody on 3 July 2018.

65. In *Turner v USA* [2012] EWHC 2426 (Admin), this court held that the extradition to the United States of a woman who was subject to an extradition request for trial in respect of a charge of causing death by dangerous driving was not oppressive within the terms of section 91 as, although there was a risk of her committing suicide, the court was quite satisfied that Florida had the proper facilities to cope with both her mental illness and the risk of her attempting suicide if extradited. To similar effect, in *Wolkowicz v Poland* [2013] EWHC 102 (Admin), this court held that where a requested person claimed his extradition ought to be discharged or adjourned under section 25 (for Part 1 cases the analogue of section 91) because of the risk that he might commit suicide by reason of his mental condition, the court would look at the measures to prevent such an attempt while he was in the United Kingdom, while he was being transferred to the requesting state and when he was received by the requesting state.

66. It is significant, in our judgment, that the appellant had spoken of suicide during 2017 but never attempted it and was clear that he would not act upon such thoughts. According to Dr Reid, that remained the case even when his extradition was ordered. As Mr Summers QC argues, concerns about risk of suicide were being properly controlled and managed. Then, shortly before Dr Bhanot's assessment of him, the appellant ceased taking anti-depressant medication with the results which Dr Bhanot describes.

67. Once properly medicated, as the appellant will be in the event of surrender, the risk of suicide is likely to subside. To the extent that he poses a risk to his own life in the future, that risk can and will properly be mitigated by protective measures taken in the United Kingdom and then, if necessary, in the USA. As has become usual in the extradition of individuals who are suffering from, and being treated for medical problems, the existing reports should be made available to the receiving authorities.

Conclusion

68. Neither of the grounds relied upon to resist extradition succeeds. In those circumstances this appeal is dismissed.