SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2025] SC EDIN 44

EDI-B995-24
EDI-B1578-24

JUDGMENT OF SHERIFF KOMOROWSKI

in the extradition requests of

CANADA

Requesting state

(represented by the LORD ADVOCATE)

against

BARRY EVANS

and

ROBERT BUSBY EVANS

Requested persons

Act: Ryan-Hulme
Alt: Loosemore, Advocate

EDINBURGH, 31 July 2025

The sheriff finds that the conduct for which extradition is sought, if it occurred here, would constitute an offence under the law of Scotland punishable with imprisonment of at least 12 months; accordingly, decides all questions posed by section 78 of the Extradition Act 2003 in the affirmative.

NOTE:

Introduction

[1] The Government of Canada, represented by the Lord Advocate, seeks the extradition of a man, his father and his uncle. The Canadian government alleges that Robert Evans assaulted a man resulting in the victim's death. Robert Evans is charged in Canada with manslaughter. The Canadian government alleges that Robert Evans' uncle, Barry Evans, drove him forty miles away from the town where the assault occurred, and that his father, Robert Busby Evans, arranged for him to take a flight the next day to the United Kingdom. Barry Evans and Robert Busby Evans are charged in Canada as being accessories-after-the-fact in the crime alleged to have been committed by Robert Evans (junior).

[2] A person cannot be extradited from Scotland unless the conduct alleged would be a crime if it had occurred in Scotland. This is known as the requirement for dual criminality.

[3] In Scotland, the crime of culpable homicide includes all deaths caused by an assault. No question of dual criminality therefore arises with the extradition request for Robert Evans for manslaughter (though he resists his extradition on other grounds).

[4] But there is no rule in Scotland making a person complicit in a crime where they assist the offender *subsequent* to that crime being committed. Nor is there any reported instance of a prosecution of aiding an offender to flee except where they have escaped immediate apprehension from those in ongoing pursuit. Accordingly, the question arises whether to assist a man to flee (other than avoiding immediate apprehension) constitutes a crime of any kind in Scotland. If the answer is no, Barry Evans and Robert Busby Evans must be discharged from the extradition proceedings. Otherwise, the extradition proceedings must continue for assessment of their other objections to extradition.

Outcome

[5] I hold that, under the law of Scotland, it is the crime of attempting to defeat the ends of justice to assist another in fleeing to avoid apprehension for a crime that the assisted person has committed. That is so regardless of whether pursuit of that individual has yet commenced, or indeed regardless of whether any investigation has begun. Accordingly, I find that Barry Evans and Robert Busby Evans are wanted for conduct that would be criminal according to the law of Scotland if it had occurred here.

[6] As there are other matters yet to be determined that might preclude the extradition of these two individuals, this decision does not bring these extradition proceedings to a conclusion. If ultimately the court refers the extradition of these two individuals to the Scottish Ministers, and the Ministers order extradition, then there is a right of appeal to the High Court of Justiciary. As part of such an appeal, this decision on dual criminality can be reviewed.

Questions of guilt or innocence irrelevant

[7] In assessing dual criminality, I am concerned only with what is alleged by the Canadian authorities. I make no assessment as to the truth or otherwise of what is alleged.

[8] It is never for an extradition court to adjudicate upon whether the requested person is guilty of the offences for which his extradition is sought. As extradition is sought by Canada, a designated territory, I am not required to assess the adequacy of the evidence supporting a prosecution (Extradition Act 2023, section 84(1), (7); Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (No. 3334), art. 2)).

[9] If extradition is ordered, it will be for the Canadian courts to determine in a criminal trial, following consideration of evidence, whether the requested persons have committed

the crimes alleged. I have not considered any evidence in the proper sense, only allegations and descriptions of potential evidence. I make no finding as to whether any crime has in fact been committed or who might have committed any crime. Whether the requested persons are in fact guilty of any crime is irrelevant to what I decide. Equally, what I say and decide here is irrelevant for any Canadian court that might later be called upon to assess whether the charges are proven.

[10] The requested persons remain entitled to the presumption of innocence.

Only those facts alleged relevant to establishing criminality are relevant to dual criminality

[11] It was said by Lord Hope of Craighead that for the purposes of dual criminality, the court is concerned with "the conduct for which extradition is sought", not "narrative … included [in the request] … simply by way of background" (*Dabas* v *High Court of Justice, Madrid* [2007] UKHL 6, [2007] 2 AC 31, paragraph 48). The House of Lords later said in *Norris* v *United States of America* [2008] UKHL 16, [2008] 1 AC 920, that the "distinction being drawn there [by Lord Hope] was between mere narrative background and the main conduct for which extradition was sought" (paragraph 85). The House of Lords described the scope of inquiry as concerning "the conduct … described in … the request … ignoring mere narrative background" (91).

[12] The Supreme Court of the United Kingdom in *El-Khouri* v *United States of America* [2025] UKSC 3, [2025] AC 845, quoted the latter dictum in *Norris* ("conduct described … ignoring mere narrative background") (paragraph 20), and then observed that the Extradition Act 2003 had since been amended to introduce a definition of conduct for dual criminality purposes as being "the conduct specified in the request for the person's

extradition" (paragraph 21, referring to s 137(7A)). That definition lacks any explicit qualification, whether to exclude "mere narrative background" or otherwise. Despite this, it is implicit in the Supreme Court's approach in that case in "considering … the acts … specified in the extradition request … (ignoring mere narrative background and focusing on the substance of the criminality alleged)" (paragraph 64) that one does not consider merely everything that is said in the request, even all the facts alleged.

[13] Accordingly, I shall follow the consistent and continuing course of the House of Lords and Supreme Court in considering only the *conduct for which extradition is sought*, or the *main conduct for which extradition is sought,* or the *substance of the criminality alleged.* I take all those phrases to mean only those facts alleged as are said to incur criminal liability according to the law of the requesting state.

The extradition requests

[14] There is a separate extradition request for each requested person, though the content is much the same. Each consists of a Certificate of Authentication by the Department of Justice of Canada, attaching two affidavits. The first affidavit is that of Crown counsel of the Ministry of the Attorney General for the Province of Ontario ("the Ontario prosecutor"), with two productions being a copy "information" presented to the Ontario Court of Justice, and a copy arrest warrant issued by that court. The second affidavit is that of a Detective Sergeant, of Owen Sound Police Force ("the Owen Sound detective").

The charges

[15] The Ontario prosecutor deponed that in Canada an accused is formally charged once a person swears in an information (French: *dénonciation*) that they have reasonable and probable grounds to believe the accused has committed the offences detailed.

[16] The information completed by a constable of Owen Sound Police Service and presented to the Ontario Court of Justice on 1 March 2024, states in the part of the form where the author is instructed to set out the "charges" (French: *accusations*):

> "(1) that ROBERT EVANS [junior] … on or about [17th August 2023] … did unlawfully kill Sharifur RAHMAN and thereby commit manslaughter contrary to Section 236(b) of the Criminal Code
> (2) that BARRY EVANS and ROBERT BUSBY EVANS … on [17th to 21st August] knowing that ROBERT EVANS [junior] … had committed an indictable offence against Sharifur RAHMAN, did assist ROBERT EVANS [junior] for the purpose of enabling ROBERT EVANS [junior] … to escape, contrary to section 463(a) of the Code of Canada."

The requirements for the Canadian crime of being an accessory-after-the-fact

[17] The Ontario prosecutor deponed that the definition of accessory after the fact in the Canadian Criminal Code is one who:

> "knowing that a party has been a party to the offence, receives, comforts or assists that person for the purpose of enabling that person to escape" (Criminal Code, s. 23).

[18] The prosecutor further stated that to prove that a person has been accessory-after-the-fact, the prosecution must prove:

> "(a) the offence to which the accused is an accessory after the fact; (b) the accused's knowledge of that offence; (c) the accused's conduct that had the effect of receiving, comforting, or assisting the principal; and (d) that the accused's purpose was to enable the principal's escape".

[19] The prosecutor does not explain what is meant by "escape". With respect to Barry Evans, the prosecutor refers both to steps he is alleged to have taken to convey Robert Evans far from the scene of the crime (paragraph 22), and also steps to "remove the

physical record of the group's presence at the hotel on the night of the deadly attack … for the purpose of aiding … [Robert Evans (junior)] in fleeing undetected." (paragraph 23). That latter reference indicates that escape can be both from active pursuit, but also can be constituted by evading identification as a suspect so that pursuit of that individual never begins.

The conduct for which extradition is sought; and some background narrative

[20] To some extent the affidavits of both the Ontario prosecutor and the Owen Sound detective mix what criminality they allege with the evidence that might support those allegations. The detective's affidavits also set out detailed accounts of the investigation and much ancillary detail. There is not a distinct description of how the offences are said to have been committed. To identify that I must tease out certain details from the general account given by the detective. In my analysis of the affidavits, not being conversant in Canadian law, I am at some risk of either including some details that are not set out as part of the criminality alleged, or omitting some that are.

[21] Doing the best I can, I identify the following statements of alleged fact as potentially relevant.

(a) On 17 August, 2023, Robert Evans (junior) struck the victim, outside the restaurant owned by the victim, where Robert Evans, his brother and his uncle Barry Evans had just had a meal.

(b) Barry Evans was with or near Robert Evans when the latter struck the victim; the former would have been aware of the latter striking the victim.

(c) At the time or shortly after the confrontation, a report was made to police resulting in officers being dispatched to the scene for an "ongoing assault". From that point on, an investigation of the incident began.

(d) After Robert Evans punched the victim, he ran from the scene until Barry Evans drove towards him. Barry Evans sounded the car horn, shouted at Robert Evans to "run, run", then allowed him to get in his car, before driving off to another town 40 miles away, rather than to the accommodation Barry Evans had booked earlier that evening. This was done to avoid Robert Evans being identified as the perpetrator or, if identified, being apprehended.

(e) Several phone calls took place that evening involving those who had been at the restaurant as well as Robert Busby Evans, by which means Robert Busby Evans became aware at least that his son Robert Evans had punched someone.

(f) The next day (18 August 2023), Robert Busby Evans caused a third party to book a one-way flight for his son Robert Evans for the United Kingdom, and to drive his son to the airport. Robert Evans (junior) flew out of Canada that evening.

(g) Also, the next day (18 August 2023), Barry Evans attended at the hotel in which he had booked rooms the day before for him and the brother of Robert Evans. He had made that booking just before attending at the restaurant. On his return there the next day, he retrieved his deposit and driving licence. He also removed his guest registration containing his name, signature and car registration. This was done as a means of avoiding Barry Evans and Robert Evan's brother being placed close to the scene of the crime, which in

turn was to avoid the implication that Robert Evans might have been present at the scene.

[22] The gist at least of the above statements (a) to (b), and (d) to (g), are referred to in the Ontario prosecutor's affidavits in her summary of the anticipated prosecution case against each requested person. I have also included statement (c), though it does not feature in the prosecutor's affidavits. I do not understand from the prosecutor's affidavits that an ongoing investigation, still less knowledge of an investigation, is a necessary element of the offence of being an accessory-after-the-fact, nor that the existence of such an investigation when the alleged aid of the perpetrator took place is part of the circumstances of the conduct for which extradition is sought. References to the steps taken in the investigation in the detective's affidavits appear to be mere narrative background. I mention it though as it was relied on by the Lord Advocate.

[23] Again, I reiterate that the actual truth of what occurred on 17 August 2023 and the days following, and who (if anyone) is criminally liable for what occurred, is not for me to determine. What I have set out here is not a comprehensive or even-handed description of matters relevant to either prosecution or defence.

The submissions

[24] Both Crown and defence made written and oral submissions, engaged thoughtfully with my questions and interventions, and I think to some extent developed their position as part of that engagement. I understood the essential substance and implications of their ultimate positions to be to the following effects.

[25] For the requested persons it was submitted:

- The only reported instances of offence of attempting to defeat the ends or attempting to pervert the course of justice concerned: (a) the manipulation of evidence in some way (*HM Advocate* v *Harris (No. 2)* [2010] HCJAC 102, 2011 JC 125, 2010 SCCR 931; *Hanley* v *HM Advocate* [2018] HCJAC 29, 2018 JC 169, 2018 SCCR 153); or, (b) assisting a person to escape from active pursuit (*McElhinney* v *Normand* 1995 JC 25), or custody (*HM Advocate* v *Martin* 1956 JC 1).
- There was no obligation on a person to wait around for police to apprehend them.
- There was no legal impediment Robert Evans (junior) leaving Canada, nor any warrant to apprehend him before he left. The police had not identified Robert Evans as a suspect before he left Canada.
- Facilitating the travel and departure of Robert Evans did not interfere with the course of justice. The point had not been reached yet where the course of justice was being directed towards the apprehension of Robert Evans. His departure did not prevent evidence from being obtained or inquiries being pursued.
- Barry Evan's retrieval of his own documents from the hotel could not constitute the manipulation of evidence, nor did removal of the guest registration as it had no connection to Robert Evans (junior). The accommodation booking was not made by or for Robert Evans.

[26] For the Lord Advocate it was submitted:

- A person could be charged with attempting to defeat the ends of justice, or attempting to pervert the course of justice, or some other iteration. The *nomen juris* was of limited significance. The essence of the crime is that there is an interference with what would otherwise be expected to have come to pass in the ordinary and uninterrupted course of justice (*Hanley, supra*).
- It was not essential that the course of justice had begun before a crime against the administration of justice might be committed. Indeed, the question of whether the course of justice had begun might distract from the real question (*Watson* v *HM Advocate* 1993 SCCR 875).
- In any event, once police suspected that a crime might have been committed then the course of justice had begun (*Watson, supra*). That occurred almost simultaneously with the incident, the police having been dispatched to an "ongoing assault".
- The alleged actions of Barry Evans concerned steps take to avoid evidence becoming available, a well-recognised manner of interfering with the course of justice.
- Barry Evans and Robert Busby Evans allegedly in turn helping Robert Evans (junior) flee from the locale of the alleged crime, and then from Canada entire, interfered with what would otherwise be expected in the course of justice, ie the apprehension of the suspected perpetrator.

The existence or nature of the course of justice is not crucial

[27] I agree with the submission for the Lord Advocate that whether the course of justice has begun is not the crucial question. Indeed, despite the central place that question appears to occupy in some of the more recent cases on the subject, I think questions as to when that course has begun, what is constituted by it or what forms part of it, are a distraction. I consider that placing this as an essential requirement is contrary to precedent.

Watson v HM Advocate (1993)

[28] In *Watson* v *HM Advocate, supra,* the accused was charged in furtherance of "a criminal purpose to hinder, frustrate, and defeat the ends of justice" of committing certain acts, with the "intent to defeat the ends of justice and deceive the criminal authorities and did thus attempt to defeat then ends of justice" (875E, 876B). The accused was alleged to have been present in a residence when a man was shot, to have removed all signs of that man being present there or any shooting having taken place, and later to have falsely maintained to the police that she knew nothing of the shooting.

[29] A plea to the relevancy of that charge was advanced on the basis that it did not set out the nature of the course of justice that the accused was said to have defeated. That plea was repelled at first instance and an appeal against that decision was refused.

[30] The High Court of Justiciary stated that according to the terms of the indictment, it was apparent that the shooting had become the subject of a police investigation, and it was obvious from the nature of the incident that the investigation might result in criminal proceedings (879C/D).

[31] But that was only a good answer to that part of the charge alleging the false claim of ignorance to the police. So far as the steps taken to conceal or destroy evidence of the

shooting, the court noted there was not averment of any investigation yet taking place. But the "plain implication" was that steps were taken to eliminate "what might be important evidence". The court said:

> "It is not necessary for a police investigation to have begun by that stage, or for the matter even to have come by then to the attention of the police, for actings of this kind to be capable of being described as having been done with intent to defeat the ends of justice." (879E-F)

[32] That aspect of the court's decision is, in my view, just as much part of the *ratio decidendi* as that aspect of the court's reasoning addressing the averment of deceit of the police. Without that aspect, the court's consideration of the charge would be incomplete.

[33] Sheriff G H Gordon in his commentary said the decision "extends the course of justice … back in time at which they begin to investigate an incident which may, or may clearly, turn out to have involved an offence." He posed the question whether the "next step" would be to make it an offence to lie to the police to prevent them knowing of a potential criminal incident, or instead whether the "line continue to be drawn by reference to whether the police are in fact engaged in an investigation". But I think that overlooks the High Court's assessment of that part of the charge concerning elimination of evidence before there necessarily was any police interest. The "next step", and several steps beyond that, had already been taken by the High Court in *Watson*. The line was drawn by the court immediately at the point that the criminal incident had occurred, the concealment of which was said to be an attempt to defeat the ends of justice. Perhaps more simply, there was no line to be drawn.

[34] It follows that, according to *Watson,* whatever is done for the purpose of defeating the ends of justice is itself a crime against the administration of justice. That is so whenever it is

perpetrated, irrespective of what stage the investigation has reached and indeed irrespective of whether there is any investigation at all.

[35] I reach that conclusion with some diffidence as it does not fit, at least not easily, with the tenor of subsequent *dicta* of high standing.

HM Advocate v Harris (2010)

[36] In *Harris,* the indictment included three charges of an "attempt to pervert the course of justice", two of which consisted of efforts to intimidate police officers from pursuing their investigations, the other charge consisting of driving a car in excess of the speed limit so that the registered keeper (not the accused) would incur penalties as a result. At first instance a plea to the relevancy was sustained but the High Court allowed the Crown's appeal.

[37] Counsel for the accused had submitted that there was no offence known of attempting to pervert the course of justice other than with respect to the destruction of evidence (paragraph 30). In rejecting that submission, the High Court noted instances of crimes against the administration of justice involving suborning perjury, suborning a dishonest failure to identify a suspect at an identification parade, escape from lawful custody and evading citation as a witness all as examples of one offence of "attempting to pervert (or to defeat) the ends of justice", the commission of which "might take various forms" (paragraph 28).

[38] The High Court then addressed the particular charges in that case in short order. The court said the charges of intimidation of police clearly envisaged that a course of justice was in train. Of course, the point of intimidating the police was to stop the course that they were pursuing. The charge of having engaged in efforts to falsely implicate another in the commission of speeding offences though, the court said, was "unusual", in that it was not

concerned with a "pre-existing course of justice" but one that "would be set in train" (paragraph 31).

[39] Although the High Court in *Harris* appears to treat the existence of a course of justice as an important—perhaps even required—feature for two of the charges, it then immediately created an exception for cases involving the initiation of a false course of (in)justice.

Hanley v HM Advocate (2018)

[40] In *Hanley*, the accused had been convicted of attempting to pervert the course of justice by attempting to procure an individual to not to select him at an identification parade. The accused admitted he did this but only as a means of supporting a true claim of innocence.

[41] The High Court in refusing his appeal against conviction, noted the court's discussion in *Harris* of the crime of attempting to pervert the course of justice, before then stating:

> "In all cases, the essence of the charge is the interference with what would otherwise be expected to have come to pass in the ordinary and uninterrupted course of justice in the particular case." (paragraph 12)

The court in *Hanley* then said that the court in *Harris* had:

> "noted the salient points of the offence as being that a course of justice was in train, in that case in the form of police investigations, and that the … [accused allegedly] took various steps in an attempt to stop them." (*ibid*).

[42] But in *Harris* there was of course the "unusual" charge where there was no pre-existing course of justice. It is not that an interference with what would otherwise be expected in the course of justice is the *essence in all cases* of this kind of offence. Rather, where there is such an interference with an existing course of justice, that will supply the

essence of charge. It is sufficient, but not necessary. This offence, or an offence of this genus, is also committed whether there is yet to be any course of justice set in train. Indeed, the circumstances of some crimes are such that the commencement of an investigation might not be expected in the sense of being predictable. It is notorious that some kinds of crime are often unreported and otherwise undetected. Nonetheless if some improper means were taken to avoid any investigation, that is a crime against the administration of justice.

[43] The specialty in *Hanley* perhaps was the position of the appellant that he had, albeit through improper means, sought to achieve what he claimed was the proper result, ie to avoid his implication in a charge of which he was innocent. If that was true, what he had done was not an attempt to *defeat* the *ends* of justice, but rather to improperly manipulate the *course* of justice.

Any act contrary to the administration of justice is an offence

[44] An analysis that makes an existing course of justice a requirement fails to explain the relevancy of all three charges in *Harris.* It is also incompatible with the decision on relevancy of the elements of the charge concerning elimination of evidence, before any investigation began, addressed in *Watson.* So far as *Hanley* might suggest otherwise, that would be contrary to the necessary *rationes* of prior appellate decisions of the High Court in *Watson* and *Harris*. In any event it was *obiter*. *Hanley* was a case where the offence involved improper manipulation of one step in the course of justice. It was not necessary to determine whether an existing course of justice was a necessary element of this offence.

[45] I conclude that in the law of Scotland there is one crime which I dub as offending against the administration of justice. It consists of the commission of some improper step (such as eradication of evidence, intimidation or deceit) done either:

(a) knowing it will influence, or intending to influence, any proceeding;

(b) with the purpose of causing an unjust proceeding; or

(c) with the purpose of avoiding a just proceeding.

where a proceeding is understood broadly, any steps from the outset of a criminal investigation to the conclusion of a criminal trial.

[46] In type (a), the essence of wrongdoing is the attempt to improper manipulate an existing proceeding. In types (b) and (c), it is the attempt to obtain an improper outcome in respect of a proceeding (or lack thereof). What the three types share is the intended improper distortion of the administration of justice either in the course it takes or the outcome arrived at or avoided.

[47] If I am right that an existing course of justice is not essential, then it would explain the commonplace practice in murder cases of charging an accused also with an attempt to defeat the ends of justice where steps are taken to conceal, dispose or destroy the body. I understand such charges are prosecuted without any averment or necessarily any evidence that at the time of the concealment, *&c.*, there was yet any police investigation. Indeed, the object of the exercise might often be to avoid there ever being an investigation.

Doubtful whether the conduct alleged includes perverting an ongoing course of justice

[48] I have conducted this lengthy excursus into the question of whether a course of justice is a required element of the offence in the law of Scotland, as if it were, I consider it doubtful whether the dual criminality requirement would be satisfied in these extradition requests.

[49] Whilst a criminal investigation of some kind began almost immediately, it is not apparent that the intentions or purposes of the requested persons in respect of that criminal

investigation form part of the conduct for which extradition is sought by the Canadian authorities. Indeed, it is not alleged that the requested persons knew of any ongoing investigation. At most, the implication is that the requested persons feared there was, or would be in future, an investigation that was liable to identify Robert Evans (junior) as the perpetrator.

[50] According to *HM Advocate* v *Turner* [2020] HCJ 12, 2021 JC 92, it would not be enough that steps were taken in anticipation of an investigation yet to begin. There the accused was charged with having caused death by dangerous driving from an accident that occurred due to him falling asleep at the wheel, and separately having attempted to pervert the course of justice *inter alia* by falsely telling bystanders at the scene a false account of the cause of the accident. As the Crown submitted, a fatal road accident would inevitably have resulted in some police investigation (paragraph 16). The lies to the bystanders must have been in anticipation of inquiries being made into the cause of the accident. Nonetheless Lord Turnbull held the charge of attempting to pervert the course of justice was irrelevant in that no course of justice was yet in train (paragraph 21).

[51] Of course, on my reading of *Watson, supra,* the same conduct could have been relevantly charged as an attempt to *defeat the ends* of justice.

[52] Applying the approach in *Turner* to this case, it would not be an attempt to *pervert the course* of justice merely for the requested persons to have taken steps in anticipation that inquiries would begin to find the perpetrator of the assault. If the essence of the crime is an intent to pervert a *course* of justice, it must follow that knowledge of a current course of justice is required. So, it would also not suffice that the acts were done suspecting or fearing that a course of justice had already commenced.

Concealing evidence

[53] It follows that, with respect to the allegations against Barry Evans concerning items taken by him from the hotel the day after the incident, the dual criminality requirement is met. Standing *Watson*, it does not matter whether there was in fact any investigation ongoing or whether Barry Evans knew of any investigation.

[54] I consider the alleged connection between these items and avoiding the identification of Robert Evans (junior) as a perpetrator quite tenuous. But as counsel for the requested persons properly acknowledged, it is not for me to decide what inferences might properly be drawn from the behaviour alleged as to what the purpose was in taking these items. That is a question as to guilt or innocence which is solely for the courts of the requesting state to determine after a criminal trial.

Assisting flight of the perpetrator

[55] I am also satisfied that assisting Robert Evans (junior) to leave Owen Sound, and then fly out of Canada, could be an improper means of offending against the administration of justice even though he was not being pursued as a suspect at that time.

[56] The court in *Harris* rejected the proposition that attempting to pervert the course of justice was limited to destruction of evidence. Counsel for the requested persons argued instead that instances of an offence of this kind had only been recognised where there was some kind of manipulation (not necessarily destruction) of evidence, fleeing from active pursuit or escaping from lawful custody.

[57] Once it is accepted, as counsel for the requested persons did, that any manipulation of evidence could constitute an offence against the administration of justice, it becomes impossible to draw any practical distinction between that and assisting a perpetrator to

avoid apprehension. The arrest of the perpetrator secures the administration of justice by securing his presence for trial and, in the event of conviction, punishment. But it also enables his appearance to be observed, his physical attributes such as his height and build to be recorded, and for that to be compared to the accounts of witnesses or video footage. Fingerprints or DNA might be taken from him to identify him or place him at the scene. Real evidence might be present on his person, such as blood of the victim or dust or fibres from the crime scene. The very fact of a person's apprehension at a certain place and time might provide circumstantial evidence, depending on when and where he is found. Indeed, finding an individual near the scene of the crime might be especially significant for an investigation where this occurs before a named suspect has been identified. Thus, to assist a perpetrator to flee almost inevitably entails in its effects the withholding of evidence from an investigation.

[58] Once it is realised that a course of justice is not an essential element of offending against the administration of justice, the precise nature or stage that the investigation might have reached, and the immediate effect or lack thereof of facilitating escape on that investigation, becomes of little or no significance. That Robert Evans (junior) was not a wanted man when he left Owen Sound, or Canada entire, is irrelevant. The Canadian authorities essentially allege his departure was facilitated to avoid his apprehension if and when he became a wanted man.

[59] Accordingly, I do not accept that the administration of justice can only be offended against by means of evading apprehension when there is an immediate prospect of this or at least where the person has been identified as a suspect.

[60] Thus, in respect of allegedly assisting the flight of Robert Evans, the requirement for dual criminality is also met.

Conclusion

[61] For each requested person, the entirety of the conduct for which extradition is sought meets the requirement for dual criminality.