

# COURT OF APPEAL FOR ONTARIO

CITATION: United States v. Cole, 2020 ONCA 420

DATE: 20200707

DOCKET: C67210

Doherty, MacPherson and Benotto JJ.A.

BETWEEN

The Attorney General of Canada  
on Behalf of the United States of America

Respondent

and

Harry Cole, a.k.a. Akintomide Ayoola Bolu,  
a.k.a. John King, a.k.a. Big Bro, a.k.a. Egbon

Appellant

Mark C. Halfyard, for the appellant

Heather J. Graham, for the respondent

Heard: In writing

On appeal from the order of committal entered by Justice Nancy J. Spies of the Superior Court of Justice, dated June 27, 2019, reported at 2019 ONSC 3434.

## REASONS FOR DECISION

[1] This is an appeal from an order committing the appellant for extradition to the United States on fraud charges. The background and evidence produced at the extradition hearing are summarized by the extradition judge and need not be

repeated here: see *United States of America v. Akinbobola and Cole*, 2019 ONSC 3434.

[2] The appellant submits the extradition judge made two errors. First, the appellant argues the trial judge erred in holding the requesting state had established that the person sought by the requesting state was the person before the court. Second, the appellant submits the evidence identifying the appellant as the Harry Cole, who orchestrated the fraud, was manifestly unreliable and could not satisfy the test for committal set down in s. 29 of the *Extradition Act*, S.C. 1999, c. 18 (the “Act”).

**A. WAS THE PERSON SOUGHT BY THE UNITED STATES, THE PERSON BEFORE THE COURT?**

[3] The requesting state must demonstrate on the balance of probabilities the person before the court is the person sought for extradition. At the extradition hearing, counsel for the appellant conceded, more than once, that the identity of his client as the person sought for extradition was not an issue. The extradition judge acknowledged this concession in her reasons: see para. 6. The concession is enough to dispose of this ground of appeal.

[4] In any event, the extradition judge did consider whether the requesting state had demonstrated the person before the court was the person sought for

extradition. She referred to and considered the factors identified in s. 37 of the Act (reasons, paras. 52-54) and concluded, at para. 55:

I am satisfied on the balance of probabilities that the Harry Cole before me is the person sought by the U.S.A.

[5] Even if counsel had not conceded the point on behalf of the appellant, there would be no reason to interfere with the extradition judge's finding.

**B. WAS THE EVIDENCE IDENTIFYING THE APPELLANT AS A PARTICIPANT IN THE FRAUD MANIFESTLY UNRELIABLE?**

[6] The Record of the Case ("ROC") summarized evidence from three different individuals who were intimately involved in the perpetration of the alleged fraud. They testified they had met with "Harry Cole" and repeatedly taken instructions from that person about the fraud. They regarded "Harry Cole" as the prime mover in the fraud. The three individuals all identified a photograph as a photograph of the person they knew as "Harry Cole", the person giving them instructions in respect of the commission of the fraud.

[7] The extradition judge observed the appellant in the courtroom. The appellant also had the name "Harry Cole". The extradition judge indicated he looked "similar" to the person identified by three individuals as the "Harry Cole", as the mastermind of the fraud.

[8] On its face, the identification evidence is more than ample to justify the committal for trial of a person charged with an offence in Canada. The appellant

attempts to bring the evidence within the limited exception which acknowledges that evidence which would otherwise justify a committal cannot do so where the record demonstrates the “manifest unreliability” of the evidence.

[9] There is no reason to describe the identification evidence given by the three witnesses in this case as manifestly unreliable. They were describing a person whom they had met at a meeting for the purpose of joining and participating in the fraudulent scheme. The circumstances were not such as to suggest their identification of the appellant was manifestly unreliable.

[10] The appeal is dismissed.

“Doherty J.A.”  
“J.C. MacPherson J.A.”  
“M.L. Benotto J.A.”