

## **Court of King's Bench of Alberta**

**Citation: Attorney General of Canada on Behalf of the Kingdom of Thailand v Dupre, 2022 ABKB 833**

**Date:** 20221209  
**Docket:** 2201-76960X1  
**Registry:** Edmonton

Between:

**Attorney General of Canada on Behalf of the Kingdom of Thailand**

Applicant

- and -

**Matthew Leandre Ovide Dupre**

Person Sought for Extradition

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**Reasons for Decision  
of the  
Honourable Madam Justice D. J. Kiss**

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### **Introduction**

[1] The Kingdom of Thailand (Thailand) seeks the extradition of Mr. Matthew Leandre Ovide Dupre for prosecution for murder. Mr. Dupre and another Canadian citizen, Gene Karl Lahrkamp, are alleged to have shot and killed Jimi Singh Sandhu on February 4th, 2022, in Phuket, Thailand.

[2] On May 5, 2022, the Minister of Justice issued an Authority to Proceed (ATP) pursuant to s 15 of the *Extradition Act*, SC 1999, c 18 authorizing the Attorney General of Canada to seek

an order for Mr. Dupre's committal for extradition. The ATP identifies murder as the Canadian offence corresponding to Mr. Dupre's alleged conduct in Thailand.

[3] Section 24(1) of the *Extradition Act* requires this Court to hold an extradition hearing upon receipt of an ATP. This extradition hearing does not determine whether Mr. Dupre will be surrendered to Thailand. That decision rests with the Minister. If this Court orders committal, Mr. Dupre has the right to make submissions to the Minister as to whether the Minister should still decline to surrender him, or surrender with conditions.

### General Principles

[4] The purpose of this hearing is to determine whether, pursuant to s 29 of the *Extradition Act*:

- There is evidence admissible under the *Act* of conduct that, had it occurred in Canada, would justify Mr. Dupre's committal for trial on the offence set out in the ATP; and
- I am satisfied that Mr. Dupre is the person sought by the Kingdom of Thailand.

[5] There are several legal principles applicable to extradition hearings such as this that bear repeating.

[6] The first is that an extradition hearing is not a trial. It has been described as a modest screening device designed to ensure the identity of the person sought and to protect that person from being surrendered for conduct that we would not recognize as criminal: *MM v United States of America*, 2015 SCC 62 at paras 36, 38 and 64 [*MM*] and *United States of America v Yang* (2001), 56 OR (3d) 52, 203 DLR (4th) 337 (CA) at para 47 [*Yang*]. It is supposed to be an expedited process to determine whether a trial should be held. It is structured in a manner designed to keep expenses to a minimum and to ensure prompt compliance with Canada's international obligations: *United States of America v Dynar*, [1997] 2 SCR 462 at para 122 and *MM* at paras 38, 61 and 64.

[7] Second, I am not concerned with the ultimate guilt or innocence of Mr. Dupre. At this stage, I am not permitted to assess any possible defences that may be available to Mr. Dupre or other aspects of the crime on which the accused bears the evidential or persuasive burden of proof: *MM* at para 65.

[8] I note that in his oral submissions, the Respondent's counsel advised that if Mr. Dupre is convicted of this crime in Thailand, the only sentence available to the Court there is death by lethal injection. This is simply not a factor I am permitted to consider at this stage of the extradition proceedings.

[9] Third, while the role of the extradition judge in scrutinizing evidence has been somewhat enhanced to ensure *Charter* compliance, I am only permitted to engage in a "limited weighing" of evidence to exclude evidence that is "manifestly unreliable". The starting point, however, is that the evidence presented in the certified Record of the Case (ROC) is presumptively reliable: *United States of America v Ferris*, 2006 SCC 33 at para 52 and *MM* at paras 62 and 72. I am only able to refuse committal if the evidence is so defective, or appears so unreliable, that it would be dangerous or unsafe to act on it: *MM* at para 63. This is a very high threshold.

## Overview of Thailand's Evidence

[10] The evidence gathered by Thailand against Mr. Dupre is summarized in the ROC, which was certified by Mr. Papas Suttinananarupai of the Office of the Attorney General of Thailand on March 30, 2022. The ROC is certified as containing a summary of the evidence that is available for trial and is sufficient under the laws of Thailand to justify prosecution. The ROC therefore complies with the evidentiary requirement set out in s 33(1)(3) of the *Extradition Act*.

[11] The evidence against Mr. Dupre, that has been summarized in the ROC, comes from a number of sources. They include:

- Sworn statements from 6 individuals, including:
  - Police Major Huivejasart related to findings of the Thailand police investigation including the collection and analysis of video evidence;
  - Police Major Liemsanguan related to findings of the police search of the villa rented by the victim, Mr. Sandhu;
  - Tatiana Saitiava, a tourist, related to her observations on the beach on the night of the alleged murder;
  - The Chief Receptionist at the Novotel Karon hotel relating to his observations of both Mr. Dupre and Mr. Lahrkamp during their stay at the hotel;
  - An employee of the Car Rental company related to her observations of Mr. Lahrkamp renting a vehicle; and
  - The driver of a vehicle who was in the relevant area the night of the alleged murder and provided dash camera footage from her vehicle.
- Video evidence including CCTV footage from two sources (the Rawai Municipality Office and a Café in Rawai) and dash camera footage from an individual driving in the area the night of the alleged murder;
- Documentary evidence including immigration, hotel and car rental records; and
- Physical evidence including ammunition casings, bullets, pistols, clothing, DNA and fingerprint evidence

## Position of the Parties

[12] The Applicant submits that both parts of the test for committal are satisfied in relation to the offence set out in the ATP. The Applicant argues that the extensive video, documentary and physical evidence referenced in the ROC establishes a *prima facie* case against Mr. Dupre for murder and also establishes, on a balance of probabilities, that Mr. Dupre is the person sought for prosecution by Thailand.

[13] The Respondent concedes that the second part of the test for committal has been met and that the Applicant has met its onus under s 29(1)(a) of the *Extradition Act* to establish, on a balance of probabilities, that Mr. Dupre is the person sought for prosecution by Thailand.

[14] As well, the Respondent does not dispute that the evidence in the ROC establishes a *prima facie* case with respect to three of the elements of the offence of murder – being the death of the victim, causation and the requisite mental state.

[15] However, the Respondent submits that I should refuse to order Mr. Dupre's committal on the basis that the Applicant has failed to present a *prima facie* case that Mr. Dupre was one of the perpetrators of the conduct alleged in the ROC. The Respondent argues that the evidence in the ROC is insufficient to establish that the person before this Court is the person who engaged in the alleged conduct that underlies this request for extradition.

[16] The Respondent advances 2 alternative arguments in support of his position:

1. First, the Respondent submits that the failure of Thailand to include actual copies of the CCTV and dash camera footage referenced in the ROC, or at least stills from the footage, from which it is alleged the Respondent can be identified, is fatal to its case. The Respondent argues that the Court is being asked to rely upon the opinion of a Thailand police officer, Major Huivejasart, who never met the Respondent and only compared some of the footage to a photograph taken of the Respondent when he entered Thailand. The Respondent suggests that this Court is unable to form an opinion as to whether the Respondent is the individual depicted in the footage without actually reviewing it.
2. Alternatively, the Respondent submits that the ROC lacks sufficient detail for this Court to assess the factual foundation for the Thailand police officer's identification opinions and that Major Huivejasart's opinions are therefore inadmissible.

## Analysis

**Issue #1: Can the Applicant establish a *prima facie* case that the Respondent was one of the perpetrators of the homicide without the Court having the opportunity to review the actual CCTV and/or dash camera footage?**

[17] The answer to this question, in my view, is "yes".

[18] Section 33(1) of the *Extradition Act* makes it clear that the ROC must include a document summarizing the evidence available to the extradition partner for use in the prosecution. Section 33(2) of the *Act* further provides that an ROC may include other relevant documents, including documents respecting the identification of the person sought for extradition. In other words, including other relevant documents, other than the summary of the evidence, is not a mandatory requirement.

[19] The ROC in this case includes the required summary of the evidence. The ROC also includes 2 photographs of Mr. Dupre provided by the Thailand immigration authorities.

[20] Section 33(3) of the *Extradition Act* confirms that this evidence is admissible because the ROC has been properly certified. The admissibility is therefore based on the act of certification, not on the type of evidence that is included in the ROC.

[21] I find support for my conclusion that the Applicant is not required to include CCTV and dash camera footage, or even stills from the videos, as part of its evidence for this hearing, in the case of *United States of America v Nuez*, 2017 ONSC 4519 [*Nuez*], an extradition case involving fraud charges against several individuals including Mr. Ghahremanpour. Justice Nakatsuru described the ROC in that case as a brief summary describing the evidence available, noting that it also contained a photograph of Mr. Ghahremanpour attached as an Exhibit.

[22] The information in the ROC in *Nuez* came from 3 sources. One of the sources was a witness who was initially charged but was now cooperating with the prosecution. This witness knew Mr. Ghahremanpour personally. The witness had viewed the photograph attached to the ROC and confirmed that it was a photograph of Mr. Ghahremanpour. A second source was a police detective who had reviewed video from the company that had been the target of the fraud. The video footage itself was not contained in the ROC.

[23] Nakatsuru J described the police detective's review of the video footage at para 9:

The final source is New York City Police Detective Daniel Herzog. He reviewed the video footage from the company and compared the footage with known photographs of the alleged conspirators including Mr. Ghahremanpour and Mr. Nuez. Detective Herzog identified specific instances on the video footage in which he states the conspirators directly participated in the scheme. He gives examples of specific dates and describes what each video shows. He concludes by stating that video footage from March 10 to September 25, 2016, shows Mr. Ghahremanpour personally participating in the above described scheme at least 10 times at different locations in the United States.

[24] At para 13, on the issue of identification, Nakatsuru J stated as follows:

In my view, the circle of identification is complete. First the cooperating witness personally knows Mr. Ghahremanpour and identifies a photo of him. Then Detective Herzog uses that same photograph and compares it to video footage taken from the store on April 5, 2016, and identifies one of the persons participating in the scheme that day to be Mr. Ghahremanpour. Detective Herzog also identifies Mr. Ghahremanpour in at least 10 other locations in the United States participating in the scheme.

[25] Justice Nakatsuru ultimately found there was sufficient evidence to order Mr. Ghahremanpour's committal to await surrender on the charge of fraud.

[26] *R v Angelov*, 2015 ONCA 659 [*Angelov*] is another case where video or CCTV evidence was relied upon to support the identification of the person sought to be extradited, but not included as part of the ROC.

[27] In *Angelov*, an FBI Special Agent named McCaskill identified Angelov as the person sought for extradition by comparing a photograph from his driver's license with a still photograph from surveillance video taken at a bank ATM, and two other photos - one taken in a locker room and a second at a Radisson Inn. The extradition judge refused to commit, concluding that identification from the still photograph from the ATM was manifestly unreliable. The judge

declined to rely on the other two photographs because of the manner in which they had been described in the supplemental record.

[28] The extradition judge's decision was overturned on appeal. With respect to McCaskill's identification of Angelov, the Ontario Court of Appeal stated as follows, at para 31:

The original record states that the surveillance video from the Portage Lakes branch shows two men – Halil, and another man said to be Angelov interacting with the ATM at 3:11 pm on May 3rd. The supplemental records of the case state that McCaskill has looked at this surveillance video and has compared it with the locker room and Radisson Inn photos of Angelov. On the basis of these comparisons, she believes that Angelov is the other man in the surveillance video. Especially bearing in mind the presumption of the reliability of evidence in the certified record of the case, McCaskill's identification of Angelov is sufficiently reliable to justify his committal. The extradition judge's conclusion that the identification of Angelov is manifestly unreasonable is itself unreasonable.

[29] I agree with the Applicant that by suggesting I cannot determine whether Mr. Dupre is one of the suspects depicted on the CCTV footage without having the opportunity to review it myself, the Respondent is asking this Court to assess the ultimate reliability of the Thailand police officer's evidence. That is outside the scope of my role in this extradition hearing.

[30] The *Yang* decision I have previously referenced also makes it clear that I must not assess the Thailand police officer's evidence through the lens of common law concepts applicable to the admissibility of identification evidence in Canadian criminal courts, such as those as reflected in the cases cited by the Respondent – *R v Leany*, [1989] 2 SCR 393 and *R v Nikolovski*, [1996] 3 SCR 1197.

[31] I am therefore satisfied that it is not necessary for this Court to be able to view the actual CCTV or dash camera footage. All that is required by s 33(1) of the *Extradition Act* is that a summary of this evidence be included in the ROC.

**Issue #2: Is the evidence in the ROC from the Thailand police officer, Major Huivejasart, identifying the Respondent in the CCTV and dash camera footage inadmissible because the ROC lacks sufficient factual foundation for the Court to assess the officer's opinion?**

[32] The Respondent argues that Major Huivejasart's identification of the Respondent as one of the suspects depicted in the CCTV and dash camera footage is non-expert, opinion evidence. The Respondent submits that, even if I am prepared to rely on the identification of Mr. Dupre by the Major without viewing the video footage myself, his identification opinion is still "manifestly unreliable" because the Court has not been provided with a sufficient factual foundation to assess his opinion.

[33] The Respondent concedes that the image of the Mr. Dupre from video footage obtained from the We Café, which was described in the ROC as "clear", meets the test and is not manifestly unreliable. However, the Respondent notes this footage is from approximately 9 hours before the

alleged murder and suggests that, at best, it is some circumstantial evidence in support of a theory that Mr. Dupre was the second gunman.

[34] The Respondent's concerns appear to focus primarily on the link made in the ROC by Major Huivejasart between the tattoo on Mr. Dupre's arm, as described by the hotel receptionist, and the one observed by the Major in the CCTV and dash camera footage he reviewed. The Respondent suggests that the hotel receptionist's description of the tattoo is generic. He described Mr. Dupre's tattoo as "large", "distinct" and covering his right arm – but gave no description of how it was distinct. The Major observed a "large" tattoo on the suspect's right arm on video footage but provided no further description.

[35] The Respondent argues that if Major Huivejasart's identification opinion is found to be manifestly unreliable, all that this Court is left with is circumstantial evidence of association between Mr. Dupre and Mr. Lahrkamp and this evidence of "guilt by association" is not sufficient to establish a *prima facie* case.

[36] As I have already noted, the evidence in the ROC is admissible because it meets the certification requirements of the *Extradition Act*. As well, the starting point is that this evidence is presumptively reliable. In order to establish that the evidence is "manifestly unreliable", the concerns regarding the evidence must be sufficiently powerful to justify complete rejection. It must be demonstrated that there are fundamental inadequacies or frailties in the material relied upon by the requesting state: *MM* at paras 71-72.

[37] I do not find that the very high threshold to reject this evidence has been met in this case.

[38] Unqualified opinion evidence that would not normally be admissible in a Canadian criminal proceeding is admissible in extradition hearings. As noted by Rosenberg JA in *Yang*, at para 51, even "fifth-hand hearsay, non-expert opinion and prejudicial character evidence" may be admissible. Rosenberg JA further commented at para 51:

This is disturbing only when viewed through the lens of the Canadian system and its paradigm of the jury trial. If such evidence is admissible in our extradition partners it is because their experience is that this kind of evidence can be weighed by the judicial official and will be accorded the weight it deserves. It is not for this country to assume that it alone knows how to arrive at a true verdict.

[39] The evidence of Major Huivejasart, as summarized in the ROC, goes far beyond a bare assertion that Mr. Dupre is the individual who committed the alleged crime. The factual foundation for the Major's opinion is outlined in considerable detail in the ROC. It includes reviewing extensive CCTV footage from prior to the alleged murder, footage of the actual shooting and footage of the suspects along their escape route after Mr. Sandhu was shot. It also includes reviewing dash camera footage from a vehicle that was in the area shortly after the time of the shooting and relying on information obtained from other witnesses regarding the large tattoo on Mr. Dupre's right arm.

[40] The Supreme Court has made it very clear that I am not to assess the credibility or reliability of the evidence in the ROC, except for the limited weighing of the evidence required to determine whether there is a plausible case: *MM* at paras 40, 62, 71 and 76.

[41] “This limited weighing of the evidence does not involve determining if witnesses are credible or if the evidence is, in fact, reliable. Whether the evidence is weak, or a conviction is unlikely”, are not the concern of the extradition judge: *United States of America v Abdullahi*, 2019 ABCA 238 at para 20.

[42] A similar argument to the Respondent’s alleging the manifest unreliability of a police officer’s identification of a suspect from video footage only was raised in the *Nuez* case. At para 14, Justice Nakatsuru responded as follows:

The detective made comparisons using photographs including the one the witness identified and was able to identify the respondent in a video footage of the store. While again few details are provided about the exact nature of the video reviewed or the process in which the officer conducted this comparison, there is nothing inherently unreliable about that evidence. The source material used in the comparison is identified. The officer compared the images as he was entitled to do. I find that this constitutes prima facie evidence of Mr Ghahremanpour being the man involved in the alleged fraud transaction of April 5th, 2016: See U.S.A. v Asiegbu (2008) 243 CCC (3d) 88 (BCCA) at paras 21-22. While a trial may uncover deficiencies in the process or the evidence of identification, an extradition hearing is not Mr. Ghahremanpour’s trial.

[43] Having considered these principles and case authorities, I find that the evidence of Major Huivejasart is admissible and that it is not so dangerous or unsafe that I would be justified in refusing to consider it.

**Issue #3: Is there sufficient reliable evidence in the ROC to establish, on a *prima facie* basis, that Mr. Dupre is the person who committed the alleged conduct?**

[44] The Ontario Court of Appeal in *Yang*, at para 62, pointed out that:

The fact that the prosecuting or judicial authority in the extradition partner has certified that the evidence is sufficient under the laws of the extradition partner to justify prosecution does not eliminate the function of the extradition judge to determine its sufficiency.

[45] The Court of Appeal went on to consider the amount of detail required in the ROC and at para 63 stated:

If the material presented in the record of the case is so bereft of detail, such as the witness’ means of knowledge, that the judge cannot determine its sufficiency, the judge will have to discharge the person sought for prosecution. This is not a question of the judge weighing the evidence or passing on its reliability, but of carrying out the function assigned by statute. For example, if the record of the case contained a statement that the police suspected that the fugitive committed the offence, without stating the basis for this opinion, and this was the only evidence proffered by the extradition partner as proof that the fugitive committed the offence then, even if the opinion was admissible in the requesting state as



proof of the offence, it would not be sufficient to meet the s.29 test for committal because it would have no probative value.

[46] I am required to commit Mr. Dupre if there is some direct evidence on each of the essential elements of the Canadian offence specified in the ATP, or some circumstantial evidence from which a trier of fact could reasonably draw an inference of guilt. If more than one inference can be drawn from the evidence, only the inferences that favour the Crown are to be considered by me: *R v Sazant*, 2004 SCC 77 at para 18.

[47] The Respondent concedes that there is sufficient evidence in the ROC on all of the elements of the offence of murder with the exception of identity.

[48] Therefore, I am required to look at the totality of the evidence to determine whether it establishes a *prima facie* case of identification. The most compelling evidence includes the following:

1. The photographs of Mr. Dupre taken by the Thailand Immigration authorities upon his entry into the country and the “clear” image of both Mr. Dupre and Mr. Lahrkamp obtained when they entered the We Café in Rawai District on Feb 4, 2022, the day of the alleged murder. These images were compared by the Thailand police investigator, Major Huivejasart. He confirmed a match, and then used to the images to identify Mr. Dupre in other CCTV and dash camera footage;
2. Evidence linking Mr. Dupre to the Toyota Fortuner vehicle Mr. Lahrkamp rented on February 2, 2022, including CCTV footage of both Mr. Dupre and Mr. Lahrkamp driving in this vehicle to and from Siyuan 9 Alley on February 3, 2022, where they were observed inspecting what appeared to be a GPS tracker installed on the victim’s vehicle; CCTV footage of both Mr. Dupre and Mr. Lahrkamp parking this same vehicle at the We Café on February 4, 2022, and CCTV footage from later that evening of both Mr. Dupre and Mr. Lahrkamp parking the vehicle in Siyuan 9 Alley prior to the time of the alleged murder and then returning to the vehicle together afterwards;
3. Evidence identifying Mr. Dupre by reason of his arm tattoo. The hotel receptionist, who interacted with Mr. Dupre, confirmed that Mr. Dupre had a distinctive large tattoo from his right shoulder to his right wrist. The ROC indicates that clear images from the We Café CCTV showed Mr. Dupre’s face, appearance and large tattoo. The tattoo was also visible on the CCTV and dash camera footage of Mr. Dupre and Mr. Lahrkamp leaving the scene of the alleged murder and was used by Major Huivejasart to confirm Mr. Dupre’s identity;
4. Significant evidence establishing a link between Mr. Dupre and Mr. Lahrkamp, for whom the Respondent’s counsel has conceded there is sufficient evidence of identity to establish a *prima facie* case against. This includes the evidence that they both arrived in Thailand on the same flight and left the country the same day; they stayed together in the first hotel and then both moved to a different hotel the same day; they were observed to “hang out” together; they had lunch together at the We Café the day of the shooting; and were seen driving together in two different rental vehicles; and
5. Extensive CCTV surveillance and dash camera footage that the ROC states: “captured images of Mr. Lahrkamp and Mr. Dupre prior to the incident as they visited the crime

scene for observation and placement of the suspected GPS device, while they were walking and hiding nearby, while the shooting took place, and also while they were fleeing.” This provided the investigators with a “complete picture” of the incident so that they could connect the pieces of evidence together. The ROC details how Major Huivejasart and the investigative team analyzed and compared the CCTV footage with the photos received from the Thailand immigration authorities and the We Café, with the information received from the car rental companies, and with the description from the hotel employee of Mr. Dupre’s tattoo in order to identify Mr. Dupre as a suspect in this case.

[49] I find that this evidence, viewed holistically, supports the reasonable inference that Mr. Dupre was involved in the alleged conduct and that the Applicant has established a *prima facie* case against Mr. Dupre. That is all that is required at this stage of the extradition process.

### **Conclusion**

[50] For the reasons I have provided, I am satisfied that the test for committal under s 29 of the *Extradition Act* is met.

[51] The ROC, which is admissible and presumptively reliable under the *Act*, satisfies me that had the alleged conduct occurred in Canada, prosecution would be justified.

[52] I am also satisfied that Mr. Dupre is the person sought by Thailand.

[53] I therefore order Mr. Dupre’s committal into custody to await a determination by the Minister of Justice whether to surrender him to Thailand.

[54] As is my obligation under s 38(2) of the *Extradition Act*, I advise Mr. Dupre that he will not be surrendered until the expiry of 30 days from his committal, that he has the right to appeal this ruling and that he has the right to apply for judicial interim release.

[55] Finally, pursuant to s 38(2) of the *Act*, I direct that the following documents be transmitted to the Minister of Justice:

- (a) A copy of the committal order;
- (b) A copy of the evidence adduced at this hearing;
- (c) Copies of all exhibits introduced at this hearing; and
- (d) A copy of this decision.

[56] I would like to thank counsel for their very thorough written briefs and helpful oral submissions.

Heard on the 27<sup>th</sup> day of September, 2022

**Dated** at the City of Edmonton, Alberta this 9<sup>th</sup> day of December, 2022.

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**D. J. Kiss**  
**J.C.Q.B.A.**

**Appearances:**

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