HARSHBARGER v. REGAN

United States Court of Appeals for the Third Circuit
599 F.3d 290 (2010)

SLOVITER, CIRCUIT JUDGE.

Canada seeks extradition of Mary Beth Harshbarger ("Ms. Harshbarger") for causing the death of her husband in the Canadian wilderness. After a Magistrate Judge found that she was extraditable, Ms. Harshbarger filed a petition for a writ of habeas corpus, which the District Court denied. She appeals.. . .

In 2006, Ms. Harshbarger traveled from Pennsylvania to Canada for a week-long hunting trip with her husband, Mark Harshbarger, and their two young children. While hunting one evening, Ms. Harshbarger waited in a pickup truck with the children while her husband walked in the brush with a Canadian hunting guide in search of moose. Ms. Harshbarger was to stay with the truck and if a moose or bear presented itself, she was to shoot it. When Mark Harshbarger was walking back to the truck and 200 feet away, Ms. Harshbarger shot him with a rifle, killing him. Ms. Harshbarger asserts that she mistakenly took her husband for a bear emerging from the brush.

On April 20, 2008, Canadian authorities charged Ms. Harshbarger with criminal negligence causing death and carelessly using a firearm in violation of the Criminal Code of Canada. The Canadian government requested extradition. On February 13, 2009, a Magistrate Judge held an evidentiary hearing during which the Government introduced the affidavits of Canadian law enforcement officers. Based upon those affidavits, the Magistrate Judge found probable cause to believe that Ms. Harshbarger committed the relevant crime and therefore issued a certificate of extraditability. . . .

"Extradition is an executive rather than a judicial function.". . . Thus, courts conduct "only a limited inquiry" to determine whether probable cause supports the charges. . .

Once an extradition order has issued, "[a]n individual challenging a court's extradition order may not appeal directly, because the order does not constitute a final decision under 28 U.S.C. § 1291, but may petition for a writ of habeas corpus.". . . "On habeas, a reviewing court may consider only 'whether the magistrate [judge] had jurisdiction, whether the offense charged is within the treaty and, by a somewhat liberal extension, whether there was any evidence warranting the finding [of probable cause].'" . . . In determining whether there was evidence "warranting the finding [of probable cause]," . . . properly authenticated "[d]epositions, warrants, or other papers .

. . offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence [at the] hearing. . . ."

Evidence that might be excluded at a trial, including hearsay evidence, is generally admissible at extradition hearings. . . . This is so because "[t]he role of the magistrate judge in an extradition proceeding is . . . to determine whether there is competent evidence to justify holding the accused to await trial, and not to determine whether the evidence is sufficient to justify a conviction." . . . .

Ms. Harshbarger argues that the hearsay evidence on which the Magistrate Judge relied, although admissible under 18 U.S.C. § 3190, was insufficient to establish probable cause under the extradition treaty between the United States and Canada. The extradition treaty provides that

> [e]xtradition shall be granted only if the evidence be found sufficient, *according to the laws of the place where the person sought shall be found*, either to justify his committal for trial if the offense of which he is accused had been committed in its territory or to prove that he is the identical person convicted by the courts of the requesting State.

Treaty on Extradition, U.S.- Can., art. 10(1), Dec. 3, 1971, 27 U.S.T. 983 (emphasis added).

Ms. Harshbarger, focusing on the Treaty's language referring to the sufficiency of the evidence "according to the laws of the place where the person sought shall be found," argues that she was found in Pennsylvania, and Pennsylvania excludes hearsay evidence. The Government responds that 18 U.S.C. § 3190, the federal statute that governs extradition proceedings, explicitly allows for the use of hearsay at an extradition hearing. . . .

The extradition treaty between the United States and Canada does not contravene the general rule that hearsay evidence can establish probable cause. In *Bingham v. Bradley*, Canada sought extradition of a habeas petitioner who was found in Illinois. 241 U.S. 511, 513 (1916). . . . The Supreme Court concluded that the hearsay affidavits of Canadian officials were competent evidence at an extradition hearing, reasoning that:

> It is one of the objects of § 5271 to obviate the necessity of confronting the accused with the witnesses against him; and a construction of this section, or of the treaty, that would require the demanding government to send its citizens to another country to institute legal proceedings, would defeat the whole object of the treaty. . . .

The treaty and statutory provisions in *Bingham* do not differ materially from the relevant provisions of the extradition treaty currently in force between the United States and Canada and the currently applicable statute, 18 U.S.C. § 3190, which is the successor statute to § 5271. . . . Although the petitioner in *Bingham* challenged the competency of the hearsay evidence rather than its sufficiency, we see no reason to depart from the Supreme Court's reasoning when interpreting the treaty and successor statute in this case. As the Court stated in *Bingham*, it would "defeat the whole object of the treaty" to require Canadian officials to appear in the United States in order to offer live testimony at extradition hearings. . . . For the above-stated reasons, we will affirm the judgment of the District Court.