

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF RHODE ISLAND

IN THE MATTER OF
THE EXTRADITION OF
DAVID SWAIN

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)
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No.

1:07MJ113A

COMPLAINT FOR ARREST
WITH A VIEW TOWARDS EXTRADITION
(18 U.S.C. § 3184)

I, the undersigned Assistant United States Attorney, being duly sworn, state on information and belief that the following is true and correct:

1. In this matter, I act for and on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom"), with respect to the British Virgin Islands (the "British Virgin Islands" or the "Requesting State").
2. There is an Extradition Treaty in force between the United States and the United Kingdom, which was signed in London, England on June 8, 1972, and entered into force on January 21, 1977 (the "Treaty"). The Treaty extends to the British Virgin Islands, solemn territory of the United Kingdom. The Treaty was amended by the Supplemental Treaty of June 25, 1985 (the "Supplemental Treaty").
3. The Treaty provides in Article 1 for the arrest and extradition of persons found within the territory of a Contracting Party who have been accused or convicted of committing an offense within the purview of Article 3 of the Treaty. Article 7 of the Treaty provides that a request for extradition shall be made through diplomatic channels.
4. The United Kingdom, with respect to the British Virgin Islands, has made a diplomatic request for the extradition of David Swain in conformity with the Treaty and has presented the properly certified and completed papers upon which the demand for extradition is founded, as required by the Treaty. A copy of the Declaration of Susan Torres, attaching a copy of the diplomatic note from the United Kingdom, along with copies of the Extradition Treaties, are attached as Exhibit A hereto. Documents submitted by the British Virgin Islands in support of the request for Extradition are attached as Exhibit B hereto. These documents include the Request for Extradition executed by the Governor of the British Virgin Islands and the Affidavit of Grace Henry-McKenzie with attachments.

5. According to the information provided by the British Virgin Islands authorities in the form authorized by the Treaty, Swain is charged with one count of murder, in violation of Section 148 of the Criminal Code 1997 (Act 1 of 1997) of the Laws of The Virgin Islands. This offense was committed within the jurisdiction of the British Virgin Islands, and a judge in the British Virgin Islands has issued a warrant for Mr. Swain's arrest on this charge.

6. According to the information provided by the British Virgin Islands authorities, on March 12, 1999, Swain's wife, Shelly Arden Tyre ("Tyre") died while scuba diving off of Cooper Island, Tortola, British Virgin Islands. At the time of Tyre's death, the only other individual in water nearby was Swain. As detailed in the Affidavit of Grace Henry-McKenzie, included within Exhibit B to this Complaint, there is overwhelming circumstantial evidence proving that Swain murdered his wife in the waters off the British Virgin Islands. This evidence includes unusual behavior by Swain following the death of Tyre, evidence concerning Swain's financial motivation for murdering his wife, medical expert testimony ruling out all known causes of accidental or natural death while scuba-diving, and expert testimony concerning the condition of the scuba equipment used by Tyre. According to experts who testified in a civil proceeding in Rhode Island Superior Court in 2006, the physical condition in which the fin strap, the snorkel and mask were found indicate that a violent struggle took place under water and that Swain murdered his wife.

7. Article 3 of the Treaty defines extraditable offenses as those punishable under the laws of both countries by imprisonment for more than one year or any greater punishment. The offense with which Swain is charged is an offense for which extradition may be granted, as provided in the Extradition Treaty cited above.

8. Mr. Swain is currently at liberty, and is believed to reside at 232 Broadway, Providence, Rhode Island. Swain operates a dive business at 79 North Road, Jamestown, Rhode Island. Swain is a United States national who was born in Louisville, Kentucky on November 20, 1955.

WHEREFORE, the undersigned complainant requests that a warrant for the arrest of David Swain be issued in accordance with Title 18, United States Code, Section 3184, and the Extradition Treaty between the Government of the United States of America and the Government of the United Kingdom.



LEE H. VILKER
ASSISTANT UNITED STATES ATTORNEY

Sworn to before me and subscribed in my presence this 13th day of November, 2007, at Providence Rhode Island.



Hon. Lincoln D. Almond
United States Magistrate Judge
District of Rhode Island