



THE COURT OF APPEAL

APPROVED

NO REDACTION NEEDED

Court of Appeal Record Number: 2023/68

High Court Record Number: 2014 No. 788JR

Neutral Citation Number: [2023] IECA 271

Haughton J.

Burns J.

O'Moore J.

BETWEEN/

REGINALD CARROLL

APPLICANT/APPELLANT

- AND -

A JUDGE OF THE DISTRICT COURT AND BY ORDER THE DIRECTOR OF PUBLIC
PROSECUTIONS

RESPONDENTS

**JUDGMENT of Mr. Justice Robert Haughton delivered electronically the 10th day of
November 2023**

1. This is an appeal from the judgment of the High Court (Ferriter J.) delivered on 11 July 2022 and his order perfected on 13 October 2022 whereby he refused to grant an order of *certiorari* quashing a decision of District Judge Mary Fahy made on 13 November 2014 at Derrynaee District Court, being the primary relief sought in the substantive judicial review application. By that

decision Judge Fahy declined the appellant's application for trial by jury, and listed the several charges before her for hearing on 8 January 2015.

2. It is also an appeal against the refusal by Ferriter J. of associated motions brought by the appellant by two Notices of Motion issued on 4 November 2021, the first of which sought discovery ('the discovery application'), and second of which sought release of the DAR ('the DAR application') of the initial return hearing before Kearns P. on 10 February 2015. The Director of Public Prosecutions ('DPP') was joined as co-respondent by order of the High Court made on 25 July 2016 and is the effective *legitimus contradictor*.
3. Lastly there is a Notice of Motion issued by the appellant on 21 July 2023 returnable to this court in which he seeks an order allowing him to "adduce evidence" which was the subject of the discovery application and the DAR application, and which he avers at paragraph 4 of the grounding affidavit which he swore on 20 July 2023 is "of fundamental importance to a full and complete consideration of the case".
4. The appellant is unrepresented and attended the hybrid hearing of the appeal on 19 October 2023 remotely, from County Donegal. The DPP was represented physically in court by Mr. Niall Nolan BL instructed by the Chief Prosecution Solicitor.
5. It should be recorded here firstly that in the course of his submissions the appellant indicated that he had had the 'flu, and had been busy preparing and lodging papers for another court matter, and that he hoped to recover some money which would enable him to obtain legal representation, and that he would have liked an adjournment. The court was not prepared to adjourn the matter as it had been listed for some time, it had been called on, and all parties were before the court, and it further appeared that the appellant was relying principally on the documents that were before the High Court, his written submissions, and the documents and exhibits related to his application to adduce further evidence. As the hearing progressed it was evident that the appellant was also well able to address the court.

6. Secondly, it should be recorded that late in the hearing the appellant's remote connection discontinued. Up to that point the connection had appeared to be a good one, and there was nothing at the court's end that would explain the loss of connection. The appellant had at that stage addressed the court for about an hour – somewhat more than the 50 minutes allocated (to which allocation he had made no objection) – and Mr. Nolan, who essentially rested on his written submission, had just completed his brief oral submission, and he had sat down. On realising the disconnection the court rose and at the court's request the Registrar Mr. O'Keeffe sent emails to the appellant's email address, but received no reply. Mr. O'Keeffe also attempted to ring the appellant's mobile phone, but his calls – the last of which was made some 20 minutes after the court rose – simply went to voicemail. The court then resat briefly and gave directions as to the filing by the respondent of certain documents, and the hearing ended with the court reserving its decision.
7. By email sent by the appellant to the court office at 17:10 on the day of the hearing he explained that he had lost both audio and visual connection. In this email the appellant restated concerns that he had canvassed in his written and oral submissions including that documents/pages were missing from the appeal books, his 'flu and need for an adjournment to instruct lawyers, his request for the DAR for 10 February 2015 (before Kearns P.), and his arguments for seeking a broader order of *certiorari* quashing the District Court prosecutions.
8. The court responded through the court office by email sent on 23 October 2023 noting that the appellant had lost internet connection and indicating the efforts made by the court's registrar to contact him, and stating what had taken place in court after that occurred, including the giving of the direction for filing by the respondent of further documents. In this email the court offered to reconvene to afford the appellant an opportunity to reply to the respondent's submissions. In consequence of this a resumed hearing was arranged and took place on 6 November 2023.

9. With regard to the court's direction on filing documents, it appeared in the course of the hearing that certain documents identified by the appellant as being listed in his Notice of Appeal and in an 'Affidavit of Exhibits' sworn by him on 4 November 2021 could not be conveniently located within the papers, and that some of these documents that the appellant sought to rely on might not have been included in the papers at all. Notwithstanding that filing of all relevant documents would normally have been the appellant's obligation, the respondent agreed to supply any missing documents to the court. Accordingly, the court directed that before close of business on 24 October 2023 the respondent's solicitors deliver to the court a list identifying where the documents could be found in the papers, and in relation to any documents that might be missing, to deliver copies to the Court of Appeal Office for furnishing to the members of the court. That was duly done in a filing on behalf of the respondent on 24 October 2023 of two Supplemental Books, one covering documents listed in the 'Affidavit of Exhibits' and the other covering the documents listed in the Notice of Appeal. The appellant was copied with this filing, and on 1 November 2023 he sent an email to the Court of Appeal Office with- an 'Exhibits Master List' reviewing the respondent's Supplemental Books and concluding that two items were missing, both of which he attached to his email. These were a 'Legal Submission Response to Respondent's for Hearing of 10.12.18' and 'Legal Submission Response to Respondent's for Hearing of 1.3.19', both being his written submissions before this court on his appeal from the refusal of Baker J. in the High Court of an application that the appellant made to amend/extend his Statement of Grounds.
10. I am satisfied that as a result of these filings, including the appellant's emailed attachments, the members of the court have been furnished with all of documents that the appellant listed, and that he wished to put before the court, with the sole exception of the DAR for 10 February 2015, a matter that I will address later in this judgment. I have considered all of these documents in

preparing this judgment, and I have also considered the entirety of the contents of the appellant's emails of 19 October 2023 and 1 November 2023.

11. The court resumed the oral hearing on 6 November 2023, on which occasion the appellant was physically present and made his reply submissions. In advance of that hearing, on Friday 3 November 2023, the appellant sought to file a further written submission running to some 41 pages, and at the resumed hearing he sought to hand this in. However no leave to file a further submission had been sought or granted by the court (or the directions judge), and it had not been copied to the respondents. For these reasons, and because the court considered that the purpose of resuming was solely to afford the appellant the opportunity to make oral reply submissions, the court declined to accept the further written submission.

Background

12. The background to the proceedings is that, arising from motoring incidents on 23 April 2013, the appellant was charged summarily in the District Court –

- 1) with dangerous driving contrary to s. 53(1) of the Road Traffic Act, 1961 as amended;
and
- 2) with endangerment contrary to s. 13(1) of the Non-Fatal Offences Against the Person Act, 1997.

13. There are 14 separate summonses in relation to alleged dangerous driving offences. These allege the commission by the appellant of an offence, in what appear for the most part to be different public places within the Derryna, District 7 area of County Galway, that he –

“On 28 Apr [*sic*] 2013 at did drive a vehicle, registration number 03C25888 in a manner (including speed) which having regard to all the circumstances of the case (including the condition of the vehicle, the nature, condition and use of such place and the amount of the

traffic which then actually was or might reasonably be expected then to be therein) was dangerous to the public.”

All of the summonses bear different “External Ref.” numbers, and all were issued to a Garda Quinn as “applicant” on behalf of the DPP as “prosecutor”. Two summonses allege offences in Bun na Habhainn, Cashel and two summonses alleged offences in Turlough, Ros Muc while the rest cite locations roughly in the Cashel/Ros Muc part of Connemara.

14. There is a single endangerment summons again naming Garda Quinn as “applicant” for the issuance of the summons on behalf of the DPP as “prosecutor”, and this charges that the appellant

—

“On the 28 Apr[*sic*] 2013 at Bothar Na Strathog, Gowla, Cashel, Co Galway district Court area of Derrynea District No 7, intentionally or recklessly engaged in conduct which created a substantial risk of death or serious harm to another did ram a Garda Patrol Vehicle reg No. 07D7915¹ with Motor vehicle 03C25888 causing extensive damage whilst Sergeant Tomas Concannon was an occupant.”.

15. Of some significance is that all 15 summonses were issued on 4 November 2013 and all bear the same *Case Number: 2013/199272*.

16. The number of dangerous driving summonses and locations, and the single endangerment summons, suggest that the prosecutions may arise out of an (alleged) collision between the appellant’s vehicle and a Garda vehicle, followed by a car pursuit, and this is given credence by the appellant’s reference in the Statement of Grounds to “*This attempted stop resulted in a collision and car chase thereafter...*”.

17. These matters came before Judge Fahy at Derrynea District Court, Cashel, County Galway initially on 18 February 2014. On subsequent list dates on 9 May 2014 and 11 September 2014 and ultimately on 13 November 2014 the appellant sought a trial by jury, but this was refused by

¹ The letter in the registration no. is indistinct on the copy summons exhibited.

the District Judge on 13 November 2014. In advance of the hearing on 13 November 2014 the appellant had sent an email to the District Court office making various allegations of harassment against the Gardaí concerned, referring to a complaint he had made to the Garda Síochána Ombudsman Commission in July 2013, and referring to a civil “counter-action” that he had served, and indicating that the charges “should really” be tried before a jury. Having refused his application Judge Fahy listed all the summonses for trial before her on 8 January 2015.

18. This prompted the appellant to seek judicial review of the District Judge’s decision, and he moved his application for leave in these proceedings before Barton J. on 6 January 2015. Before turning to that it is important to note that at that point in time the only orders made in the District Court were those made on 13 November 2014, namely –

1) refusal of the application for a trial by jury; and

2) adjournment of the charges to 8 January 2015 for hearing.

19. A key issue canvassed by the appellant before the trial judge, and which the appellant again seeks to raise in this appeal, is the scope of the grounds and reliefs for which leave was granted in the High Court. It is therefore necessary to look in some more detail at the leave application.

20. The appellant moved the application *ex parte* before Barton J., who at one point rose to read the papers – and it is clear that he did read them. The appellant’s later suggestion that the hearing was “truncated” or that he was not given a fair hearing is further dispelled by a reading of the transcript from which it is clear that Barton J. addressed the application carefully and at some length and was at pains to ensure that the appellant understood what leave was being granted, and why. Ultimately Barton J. ordered that –

“(1) that the Applicant have liberty to amend his Statement of Grounds(i) to refer to Judge Mary Fahy only as Respondent(ii) to refer to the single relief sought namely an Order of

Certiorari quashing the *Order of Judge Mary Fahy dated the 13th November 2014* as above(iii) to refer to those grounds only that refer to the relief at (ii)

(2) that the Applicant do have leave to apply for an Order of Certiorari as above by way of application for judicial review on the grounds set forth in the amended Statement of Grounds as directed at paragraph 1(iii) above

(3) that the said proceedings hereinbefore referred to be stayed until the determination of the application for judicial review or until further Order or until the stay of proceedings shall have lapsed by reason of the Applicant's failure to serve an originating Notice of Motion herein within the proper time".

(Emphasis added)

From the words to which emphasis is added as it is clear that the leave granted related to the (only) two orders made by Judge Fahy on 13 November 2014. On the face of the order no leave is granted to seek any wider order of *certiorari*. Barton J. also ordered that the originating Notice of Motion be returnable to the judicial review list on 10 February 2015 and that it be served with the amended Statement of Grounds and verifying affidavit and leave order on the District Court Clerk on behalf of the respondent judge.

21. It is also clear from a reading of the *ex parte* papers and the transcript of the hearing before Barton J. that the appellant's primary complaint was that his request for a trial by jury had been refused by the District Judge, and that that was the issue upon which leave was granted. See for example in the transcript page 1, lines 8 to 4 and line 34, page 2, line 30, and page 3, lines 9 to 12 where the appellant makes submissions about his right "to have the trial by jury". On page 6, lines 11 to 34 there are several exchanges between Barton J. and the appellant in which the latter agreed that his main criticism was his contention that the offences were triable by jury, and that he was never asked to elect between summary trial and trial by jury. This continues on page 7, and at

line 27 where the appellant says “They basically ignored my oral request.” There is more in the same vein, and then on page 12, line 4 Barton J. says –

“I’m disposed to give you leave to seek relief by way of *certiorari* against the order of the District Judge made in November.”

Barton J. then indicated that he would grant a stay on the proceedings in the District Court pending the hearing of the judicial review, and that he would confine the respondent to the judicial review to just the District Judge (transcript page 12, lines 7 to 9, and line 13 respectively), and he repeats this at page 12, lines 22 to 23, stating “...the relief is confined to seeking an order of *certiorari* against the order of the District Judge made in November.” In this regard the appellant in his leave application had sought to name as respondents “*Courts Directorate; Garda Siochana Ombudsman Commission GSOC; Commissioner of the Garda Siochana; Director of Public Prosecutions*”.

22. On page 13, lines 7 to 8 Barton J. states –

“And then the grounds, what I’m going to do is give you – I’m going to give you liberty to file amended grounds confined to that issue.”

This is repeated several times across pages 12 to 13, and the appellant indicated that he followed what was being said. It is again restated by Barton J. on page 15, at lines 28 to 31 where he repeated that he was giving liberty to the appellant to “amend the grounds by basically taking out those things which are not relevant and to simply confine the grounds to the main issue.”

23. What is abundantly clear from this is that leave was not granted on some broader basis, and specifically that leave was not granted by Barton J. for an order prohibiting the District Court prosecutions from proceeding.

24. The appellant failed to serve papers on time and by order of 26 January 2015 (Noonan J.) he was granted an extension of time to 30 January 2015. On the return date of 10 February 2015 the matter came before Kearns P. and it is the appellant's repeated contention that Kearns P. indicated that the appellant could proceed with a broader claim for an order of *certiorari* dismissing the criminal charges against him. However this broader claim was not encompassed by the leave order, and there was no application made to Kearns P. to amend, and there was no Notice of Motion or grounding affidavit filed under the Rules of the Superior Courts for that purpose.
25. The appellant did make a formal application in 2017 to amend his Statement of Grounds, but before turning to that and for the sake of completeness I should mention what occurred in the intervening period. Although the charges were adjourned from time to time in the District Court the respondent ultimately proceeded, notwithstanding the appellant's objection that a stay was in place, a view with which the respondent appeared to disagree. The charges were heard on 12 May 2016 in the appellant's absence and he was convicted and sentenced and bench warrants were issued on that day. The appellant sought judicial review in proceedings bearing record number 2016 370 JR. Leave was granted by Humphreys J. on 30 May 2016, with a stay, and on 20 December 2016 an order was made unopposed by Noonan J. quashing the convictions and bench warrants and all records relating to same.
26. Turning then to the amendment application in the present proceedings, on 9 January 2017 the appellant issued a motion under Order 84 of the Rules of the Superior Courts seeking to amend the leave order by allowing him to extend his grounds and seek additional reliefs, in particular an order of prohibition, and also seeking discovery. This was returnable to 6 February 2017 but was ultimately heard and decided by Baker J. on 31 May 2017, some two and a half years after the impugned decision in the District Court and over four years after the underlying decisions of An Garda Síochána and the DPP in relation to the issuance of the summonses in November 2013, and therefore well outside of the normal time limit for seeking leave to seek judicial review. Key

parts of her *ex tempore* judgment are recorded in the judgment now under appeal, but the transcript and her written-up *ex tempore* judgment were included with the appeal papers.

27. Baker J. did not accept the appellant's contention that Kearns P. had granted liberty to amend the Statement of Grounds, noting that no formal application had been made before the President. Baker J. also looked at the transcript of the leave hearing and held that Barton J. confined leave to *certiorari* of the decision of the District Judge to try him without a jury, and that leave to seek prohibition had not been sought before him. She also noted that, at a time when the appellant was legally represented and brought an application for joinder of the DPP on 25 July 2016, the question of extending the grounds was not mentioned in the grounding affidavit. She found no good reason to allow leave to amend the grounds and refused the application.

28. The appellant appealed the decision of Baker J. and I have considered the two written Legal Submissions dated 10 December 2018 and 1 March 2019 that the appellant filed in support of his appeal. This court (Birmingham P., McCarthy and Kennedy JJ.) in an *ex tempore* judgment given on 1 March 2019, found no error and dismissed the appeal. Leave to further appeal was refused by the Supreme Court on 7 February 2020.

29. It follows that the appellant cannot pursue any order seeking to prohibit the District Court from hearing the criminal charges against him, or *certiorari* of those charges, or seek *certiorari* on grounds other than the issue raised in relation to trial by jury. As the trial judge correctly found at paragraph 43 –

“...It is simply not open to the Court to entertain an application for prohibition or dismissal of the criminal proceedings based on the wide-ranging allegations as to fabrication of evidence and other alleged acts of corruption and criminality which have been extensively ventilated by the applicant in the course of these proceedings to date and at the hearing before me.”

30. Indeed it seems to me that an issue estoppel arises in respect of the appellant's continuing attempts, both in the High Court and in this court, to raise these broader issues and pursue wider reliefs. His attempt to belatedly raise them in his amendment application was unsuccessful; his appeal of that outcome to this court was unsuccessful; and he was not permitted to further appeal to the Supreme Court. The appellant invites this court to "depart from its previous decision" viz. the decision of 1 March 2019 dismissing the appeal from the decision of Baker J., on the basis that the court can depart from its own previous decisions. This invitation is misconceived: such a jurisdiction is exceptionally exercised where a point of law is determined by one court and arises subsequently in *another case* and the court considers that it was not fully argued or has been overtaken by subsequent jurisprudence and should now be decided differently; what this court definitely cannot do is (effectively) revisit or overturn a decision made in the *same case* by another division of the court. This court simply cannot entertain the appellant's attempts, again raised in his written submissions and in his oral submissions at the hearing of this appeal (both primary and by way of reply), and in his email sent after the hearing on 19 October 2023, to pursue these issues any further. This is so regardless of the merits or otherwise of his claims, and reflects firstly the need for precise pleading of reliefs and grounds, secondly the procedural imperative that the three month time limit in Order 84 of the Rules of the Superior Courts for seeking judicial review be observed and can only be extended if the court being asked to extend time is satisfied that there is good and sufficient reason for doing so and either that the circumstances were outside the control of the applicant or could not reasonably have been anticipated (Order 84, Rule 21), and thirdly the need for finality in litigation such that decisions made should not be revisited by the same court.

31. In his affidavit sworn on 20 July 2023 to support the application to adduce new evidence the appellant at paragraphs 4 to 7, and extensively in paragraphs 10 to 13 and 15, again impermissibly seeks to canvass the scope of the leave order and what occurred before Kearns P. – and in this

context effectively renews the DAR application – and he again seeks to challenge the correctness of the decision of Baker J. He again sought to do this in his oral submissions to this court. For the reasons just given, this is no longer open to him.

32. This all means that the trial judge was correct when he identified in paragraph 44 of his judgment the net issues that properly fell to be decided by the High Court, and those that could not be pursued, stating:

“The fact that the substantive judicial review hearing is confined to the net legal issue of whether or not the applicant was entitled to elect for trial by jury in respect of the offences with which he was charged is fatal to his separate applications for discovery and for copies of the DAR of proceedings before the High Court, within this judicial review, on 6th January 2005 and 10th February 2005. The express basis upon which the applicant seeks discovery and the DAR records is to support his case in fabrication of evidence, malicious prosecution and other allegedly serious acts of corruption i.e. his purported case for prohibition/dismissal of the criminal proceedings. As these proceedings are not concerned with such allegations (he not having been granted any leave to argue those matters in these proceedings), the applications for discovery and for the DAR records are misconceived. No discovery or DAR is required for the applicant to fairly and fully advance his case on the single ground on which he has been granted leave to advance i.e. that he was wrongly denied a right to trial by jury. That issue is a purely legal one.”

33. It follows that the appeal in respect of the DAR application must fail, and that insofar as that is effectively renewed under the guise of the recent application to adduce new evidence before this court, that application must also fail.

34. The same applies to the discovery application, and the appellant’s collateral attempt to pursue that by way of the motion issued on 21 July 2023 to “*Adduce Evidence*”.

35. The discovery application which issued on 4 November 2021 sought an extensive range of material including: original handwritten statements of witnesses; forensic IT analysis of electronically generated witness statements; the audio/videotape of the interview of the appellant at Clifden Garda Station on 23 April, 2014; DAR recordings of the proceedings in the District Court and details of forensic evidence results recovered from the appellant's house on 24 November 2018 and 25 August 2021. In his grounding affidavit sworn on 4 November 2021 the appellant sought to justify discovery for four reasons –

1) to show the “Malintent/Abuse of Authority towards Applicant from prior to Motoring incident...and subsequently...”;

2) “[T]o show Judge Mary Fahy and District Court system are biased and not fit to judge this case with demonstrable fairness as required by Article 6 EHRA [*sic*] and Constitution”;

3) “[T]o show District Court is a partisan/parochial system biased towards police and prepared to Abuse Process/Pervert the Course of Justice. Where there is any claim of racist bias by police a District court Judge who deals with them personally on a regular basis is wholly inappropriate, unprepared to listen to this aspect of defense [*sic*] and thus not a fit and proper place for Justice”; and

4) “[T]o show there has been collusion between Galway court service from Chief Officer down, with Judge Fahy and police, amounting to Abuse of Process/Perversion of the Course of Justice/Malfeasance in Public Office.”

36. Regrettably it is apparent from this that the appellant has no trust or faith in the criminal justice system administered in the District Court. Indeed in 2018 the appellant made a further application for leave to seek judicial review seeking *inter alia* orders preventing Judge Fahy presiding over certain other criminal matters despite requests by the appellant on 22 February 2018 and 26 April 2018, that she recuse herself. He was refused leave by Noonan J. whose decision was upheld by

this court (Edwards J.), reported at [2019] IECA 258. The reasons the appellant gives for seeking discovery in the present proceedings reflect this distrust, but it must be readily apparent that none of the reasons he gives for the discovery sought have any relevance to the discrete legal issues raised by the leave order, namely whether he has an entitlement to trial by jury in respect of any of the charges. I cannot say whether any of the materials he seeks are materials to which the appellant has a disclosure entitlement for the purposes of defending the dangerous driving and endangerment charges in the District Court, but it is not necessary to decide that. What is clear is that such materials can have no relevance whatsoever to the discrete issue of entitlement or otherwise to trial of those charges before a jury.

37. It therefore follows that insofar as the appellant in his application to this court to “*Adduce Evidence*” merely repeats his failed application for discovery in the High Court – and this is what he does in his Notice of Motion and particularly at paragraph 11 of his grounding affidavit – he has no entitlement to the orders that he seeks.

38. It is convenient here to refer to certain other matters raised in his recent grounding affidavit. Firstly, at paragraph 7 the appellant refers to the judicial review of the (purported) convictions on 12 May 2016 and the resulting bench warrants. As detailed earlier in this judgment, this was the subject of judicial review proceedings Rec. No. 2016 370 JR which were conceded by the DPP in the High Court on 20 December 2016. I cannot see that that case has any relevance to the present judicial review or appeal, or the discovery sought. The effect of that order was simply to quash convictions and consequential bench warrants improperly obtained, but it leaves the charges pending before the District Court.

39. Secondly, at paragraph 8 (also developed in paragraph 14) of his affidavit the appellant complains that the trial judge ignores the judgment of this court (Pilkington J., Haughton and Murray JJ. concurring) handed down on 2 February 2022 in which the court overturned a decision of the

High Court and granted him leave under the Mental Health Act, 2001 to pursue proceedings against the doctor who examined him at Clifden Garda Station on 23/24 April 2013 and certified him for involuntary admission to the mental health unit of University Hospital Galway. In his oral submissions he sought to persuade this court that this has some relevance, largely because it relates to events that occurred in the same 24 hours and are the subject of the charges in question. That decision is adverted to by Ferriter J. at paragraph 25 of his judgment, but the trial judge cannot be faulted for ignoring it or giving it no weight. That decision decided, in a statutory context, that the appellant should be granted leave to pursue civil proceedings, currently being pursued in the Circuit Court – it decided no more than that – and I am satisfied that it has no relevance to the legal issues arising in the present judicial review.

40. Thirdly in paragraph 9 the appellant refers to other incidents – alleged violent attacks on him by neighbours in November 2019 involving use of a stone, and arson attacks on his home in August 2019 – and his affidavit reproduces photographs to support this. This material can have no relevance to the present judicial review and appeal.
41. Fourthly in the later part of paragraph 14, over pages 18 to 22, the appellant makes, in what may charitably be described as a robust manner, many allegations directed at Judge Fahy, the Galway Court Service and Gardaí, including wide-ranging allegations of bias, unfairness and misconduct in court, fabricated evidence, subterfuge, perversion of the course of justice, and racial discrimination. None of these allegations were the subject of leave in the present judicial review, and they cannot be considered and cannot form the basis of an application to adduce further evidence or discovery. To the extent that they are repeated in his various submissions and email of 19 October 2023, the same applies – they are simply not relevant.

The Legal Issues

42. To a degree the foregoing is determinative of this appeal, because in his written submissions of 12 May 2023 the appellant has singularly failed to address the substantive issues, correctly identified by the trial judge as being whether he was entitled to elect for trial by jury of –

1) the dangerous driving charges under s. 53 of the Road Traffic Act, 1961 as amended, or

2) the endangerment charge under s. 13 of the Non-Fatal Offences Against the Person Act, 1997.

43. His written submissions do not address these issues at all. Instead they dwell on the scope of the leave order, allegations in relation to refusal of disclosure in unrelated matters, and a suggestion that it is an abuse of the process for these prosecutions to proceed almost 10 years after the events giving rise to the prosecutions – all matters that have no relevance or bearing on the legal issues decided in the High Court. Unfortunately his oral submissions were also largely directed to irrelevant matters, notwithstanding this court’s best endeavours to get him to focus on the legal issues.

44. However in paragraph 14 of his affidavit sworn on 20 July 2023 under the heading “*Trial by jury Feeney v Clifford Arguments*”, the appellant at certain points does address the substantive issues, and he also referred to this briefly in his oral reply submission. As he is a lay litigant, and as the respondent has had ample notice of these arguments and does not claim to be prejudiced, I have considered these submissions and I address them below.

45. At the outset some general comments should be made by reference to Article 38 of the Constitution, two sections of which are relevant. Article 38.2 provides –

“Minor offences may be tried by courts of summary jurisdiction.”

The District Court is a court of summary jurisdiction.

46. Then Article 38.5 provides –

“38.5. Save in the case of the trial of offences under section 2, section 3 or section 4 of this Article no person shall be tried on any criminal charge without a jury.”

Section 3 relates to special courts – such as the Special Criminal Court – and s. 4 relates to military tribunals, so neither of these is relevant to the appeal. Only Article 38.2 relating to summary trial of minor offences is relevant for present purposes.

47. In *Conroy v. AG* [1965] IR 411 at page 434 Walsh J. in the Supreme Court stated –

“The Constitution does not give an accused person a right to trial by jury for a minor offence or a right to trial in a Court of summary jurisdiction for a minor offence. The provisions of s. 2 in relation to minor offences are permissive. The Oireachtas may determine that minor offences may be tried with a jury or without a jury.”

I now refer to what the Oireachtas has said in the relevant statutory provisions.

Section 53 of the Road Traffic Act, 1961 (as amended)

48. Section 53 provides –

“Dangerous driving.

53.– (1) A person shall not drive a vehicle in a public place in a manner (including speed) which having regard to all the circumstances of the case (including the condition of the vehicle, the nature, condition and use of the place and the amount of traffic which then actually is or might reasonably be expected then to be in it) is or is likely to be dangerous to the public.

(2) A person who contravenes subsection (1) commits an offence and–

(a) in case the contravention causes death or serious bodily harm to another person, he or she is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine not exceeding €20,000 or to both, and

(b) in any other case, he or she is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

(3) In a prosecution for an offence under this section or section 52, it is not a defence to show that the speed at which the accused person was driving was not in excess of a speed limit applying in relation to the vehicle or the road, whichever is the lower, under Part 2 of the Road Traffic Act 2004.

(4) Where, when a person is tried on indictment or summarily for an offence under this section, the jury, or, in the case of a summary trial, the District Court, is of the opinion that he or she had not committed an offence under this section but had committed an offence under section 52, the jury or court may find him or her guilty of an offence under section 52, and he or she may be sentenced accordingly.

(5) Where a member of the Garda Síochána is of the opinion that a person has committed an offence under this section, he or she may arrest the person without warrant.”

49. We are not concerned here with any alleged offence under s. 53(1) involving death or serious bodily harm. It follows that the 14 dangerous driving offences charged can only be tried summarily in the District Court – the legislature has not provided for trial of such offences before a jury. Accordingly on the face of s. 53(2)(b) the appellant has no right to a jury. As is stated in O’Malley, *The Criminal Process* (1st edn., 2009) at paragraph 9-11:

“A purely summary offence never carries the right to trial by jury. A person charged with such an offence ... would have to challenge the constitutionality of the relevant statutory provision on the ground that the offence which it creates is non-minor in nature.”

50. In these judicial review proceedings the appellant did not seek or obtain leave to mount a constitutional challenge to the summary trial of the charges under s. 53(2) where neither death nor serious bodily harm has resulted, on the basis that the offences are non-minor. It follows,

subject to an argument that appears in his recent affidavit concerning the cumulative sentences being ‘non-minor’, which I will address later in this judgment, that his appeal in relation to the dangerous driving charges, must therefore fail.

Section 13 of the Non-Fatal Offences Against the Person Act, 1997

51. This provides –

“Endangerment.

13.(1) A person shall be guilty of an offence who intentionally or recklessly engages in conduct which creates a substantial risk of death or serious harm to another.

(2) A person guilty of an offence under this section shall be liable–

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 7 years or to both.”

Section 6 of the Fines Act, 2010 amended s. 13(2)(a) translating the original fine of £1,500 to a “class C fine”, which is a fine “not greater than €2,500 but greater than €1,000”.

52. As is the case with all offences that fall to be tried summarily, the maximum term of imprisonment does not exceed 12 months. O’Malley, *op cit* says of offences worded in this manner:

“9-12 Certain offences are triable summarily or on indictment at the election of the prosecution. It is quite common nowadays for a statutory provision creating a criminal offence to allow for either summary or indictable prosecution with a lower maximum penalty in the case of a summary conviction. Offences of this kind are commonly known as hybrid offences.”

O'Malley later identifies the differing roles of DPP and the District Court in such cases:

“9-12...The DPP is performing a perfectly legitimate administrative role in taking the initial decision as to the appropriate mode of trial, but such a decision cannot force the District Court to exceed its jurisdiction to a point which would clearly be unconstitutional by proceeding with the trial of a non-minor offence.”

53. As the respondent points out in written submissions this contrasts with provisions creating offences where the accused is put to their election, such as a charge of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, but for this to occur it must be provided for by statute. In the context of theft offences this is done in s. 53(1) of the said Act of 2001 in the following terms –

“53.– (1) The District Court may try summarily a person charged with an indictable offence under this Act if–

(a) the Court is of the opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily,

(b) the accused, on being informed by the Court of his or her right to be tried with a jury, does not object to being tried summarily, and

(c) the Director of Public Prosecutions consents to the accused being tried summarily for the offence.”

(Emphasis added)

54. In such a case the District Judge must consider the offence to be a minor one and both the accused and the prosecutor must effectively consent to summary trial. O'Malley *op cit* at paragraph 9-18 gives further examples where this occurs, such as s. 19 of the Criminal Justice (Public Order) Act, 1994 in respect of a charge of assaulting or obstructing a police officer, where the accused, having

agreed to be tried summarily, is convicted and is then subject to lower maximum penalties (€5,000 fine and/or 12 months imprisonment or both) than would be the case if he/she was convicted on indictment (a fine and/or 7 years imprisonment or both).

55. Section 13 of the 1997 Act does not expressly confer on the accused person a right to elect trial by jury. I therefore agree with the trial judge, as a matter of statutory interpretation, that once the DPP elects to proceed summarily i.e. to charge the accused person summarily in the District Court, rather than to indict the accused person in the Circuit Court, it follows that there is no right in the accused to elect for a jury trial. It equally follows that the scope for sentencing in the District Court is constrained by s. 13(2)(a) to a fine not exceeding €2,500 or imprisonment for a term not exceeding 12 months or both.

56. As he did in the High Court the appellant now seeks to rely on the decision in *Feeney v. Clifford* [1989] IR 668. He relies on it for the proposition that the charges against him are too complex, or otherwise inappropriate, to be dealt with summarily in the District Court, and that therefore he should be tried, presumably on indictment, before a jury.

57. The facts of *Feeney* are conveniently set out in the headnote –

“The applicant appeared before the respondent District Justice charged with four scheduled offences. The facts relating to the offences were outlined by the prosecuting garda and the respondent decided that the offences were minor and fit to be tried summarily. The applicant acceded to the jurisdiction of the court and pleaded guilty to each offence. The respondent was informed that the applicant was currently serving two sentences of imprisonment, the longer of which would not expire for seventeen months. The respondent was of opinion that the charges before him merited a sentence of two years’ imprisonment. He decided that since he was unable to impose the sentence which he intended, as he had no power to impose a two year sentence to commence on the expiry of the existing sentences,

the offences, though minor, were not fit to be tried summarily and that the applicant should be sent forward for trial at the Circuit Court. He therefore declined jurisdiction and adjourned proceedings for service of a book of evidence.”

The applicant applied for an order of prohibition prohibiting the District Court from proceeding to a preliminary hearing of the charges and sending the accused forward for trial, and for an order of *mandamus* compelling the District Judge to deal with the matter on the basis of the convictions recorded by him.

58. The High Court declined to grant relief, but Mr. Feeney succeeded on appeal in the Supreme Court. The unanimous judgment of the court was delivered by McCarthy J. who had some sympathy for the respondent’s view of what sentence was appropriate once he learnt of the previous convictions, but he then explained, at page 679 –

“Once there has been a plea of guilty to what appears to be, on the facts alleged, a minor offence fit to be tried summarily, there can be no going back on the conviction that necessarily follows the plea of guilty; the district justice cannot hold the plea in some form of forensic limbo, until he has heard the evidence material to penalty; yet there must be many such instances.”

59. I agree with the trial judge that the appellant’s reliance on the decision in *Feeney* is misplaced. The facts were materially different. In particular in *Feeney* the District Judge had decided that the offences charged were minor and fit to be tried summarily, and Mr. Feeney agreed to be tried summarily in the District Court – and pleaded guilty. It was only after hearing of Mr. Feeney’s previous convictions that the District Judge had a change of heart because he considered that the offences before him warranted a two-year prison sentence which was in excess of what he could impose. The decision of the Supreme Court is certainly not authority for the proposition that in respect of a charge under s. 13 of the 1997 Act which the DPP has decided to bring summarily in

the District Court the accused has a right to opt for trial on indictment before a jury. In such cases the DPP is the entity who decides on the mode of prosecution, and the accused is not entitled to elect for a jury trial.

60. In reaching his decision in *Feeney McCarthy J. referred to State (McEvitt and others) v. Delap* [1981] IR 125, an important decision of the Supreme Court that established the principles of law that still apply. There the court considered whether a person charged with a minor offence under s. 3 of the Prohibition on Forcible Entry and Occupation Act, 1971 had a right to trial by jury. Section 3(1) created the offence of forcible entry, and s. 7 provided that a person committing the offence would be liable on summary conviction on a first offence to a fine of £50 or up to 6 months imprisonment or both, and on summary conviction for a second offence of a fine up to £100 and/or imprisonment up to 12 months, and then provided that “on conviction on indictment” the person would be liable to a fine up to £500 and imprisonment up to 3 years or both. It may be observed that the structure of s. 7 of the 1971 Act is very similar to s. 13 of the 1997 Act under consideration, the only difference, which is not material to the present discussion, being the provision for an increased penalty for a second summary conviction for forcible entry and occupation.
61. The applicants were prosecuted in the District Court on the basis that the DPP had decided that the charges should be tried summarily. However, the applicants wanted a trial by jury, and in the High Court (Doyle J.) they were granted an order prohibiting the prosecution proceeding summarily, apparently on the basis that the High Court considered that they had an inherent right to a jury.
62. The Supreme Court disagreed. O’Higgins C.J. cites with approval the *dictum* of Walsh J. in *Conroy* in relation to Article 38 to which I have referred earlier, and his judgment traces the statutory history of the jurisdiction to try offences summarily from the time of Henry VII, through

the Petty Sessions (Ireland) Act, 1851 up to the foundation of the State. He notes that “it was sometimes provided that the defendant should have an option to be tried by indictment or that the Justices could so opt”, and that in the absence of a provision allowing for summary trial the default position was trial “as an indictable misdemeanour by a jury”. Then the Courts of Justice Act, 1924 in s. 77 vested the previous jurisdiction of Justice(s) of the Peace and the Petty Sessions in the new District Court, and by s. 77B that court was given additional jurisdiction in relation to specified indictable offences if the Justice was of the opinion the offence was minor and the accused did not object. That provision was in time replaced by the s. 2 of the Courts of Justice Act, 1951 – and that Act listed some 21 indictable offences that could be tried summarily if the court was of opinion that the facts if proved constituted a minor offence and the accused “on being informed by the Court of his right to be tried with a jury” did not object.

63. Referring to the different types of offences created by statute O’Higgins C.J. stated –

“When such statutes only provide for summary trial the offence is not indictable and cannot be tried by a jury. If, therefore, a person so charged with a statutory offence which is only triable in a summary manner seeks a trial by jury he takes on a heavy onus. He has to show that the statute in question offends Article 38.5 of the Constitution by providing for the summary trial of an offence that is not a minor offence. He cannot, of course, do this in the District Court.”

He then proceeds –

“In this case we are also dealing with a statutory offence. It is created by Section 3 of the Forcible Entry Act 1971 and is prosecuted in a summary manner under Section 7(a). It is not even contended that an offence so prosecuted under this provision is other than a minor offence. The validity of the statute or of any of its provisions is not called into question. Since the offence being prosecuted is a minor offence no right to trial by jury at the request of the

accused exists unless such is conferred by statute and such is not conferred. The fact that the prosecution is given the right to proceed by indictment as an alternative to summary trial is in my view irrelevant to the issues and considerations which arise in this appeal.”

That important passage applies by direct analogy to s. 13 of the 1997 Act, and is of course binding on this court.

64. Henchy J. in his concurring judgment added, in a passage later endorsed by McCarthy J. in *Feeney*

—

“If this was a case where it was not agreed that the offence was a minor one, the District Justice could make a provisional or prima facie ruling that it was, if the prosecution’s opening statement of the circumstances justified such a tentative conclusion. But if, as the hearing proceeded, it appeared that the offence was not a minor one, the District Justice would have to desist from the summary hearing and instead take the necessary steps to allow a conversion of the case into the procedures laid down by the Criminal Procedure Act, 1967, for the preliminary investigation of an indictable offence.”

65. The appellant’s contention that he has some inherent right to trial by jury because of the complexity or severity of the charge must therefore fail. It remains to address the argument made by the appellant in his affidavit of 20 July 2023 at pages 18 and 19 to the effect that the possible cumulative sentences for the dangerous driving offences charged (potentially 6 months for each of 14 charges plus fines) and also the endangerment charge (12 months maximum) mean that the offences charged are non-minor. I do so notwithstanding that the appellant did not seek or obtain leave to challenge the constitutionality of the two sections in question. Of course depending on the evidence the District Judge may consider that all 14 charges for dangerous driving should properly be regarded as a single offence, but clearly there is the potential for a conviction of

several offences with cumulative maximum sentences theoretically exceeding what would be regarded as minor.

66. However, not only may the District Court not impose a sentence in excess of 12 months for an indictable offence triable summarily, but it also may not impose a cumulative sentence in excess of two years for two or more offences. This is provided for by s. 5 of the Criminal Justice Act, 1951, which restricts the power of the District Court when imposing consecutive sentences. As amended by s. 12(1) of the Criminal Justice Act, 1984, s. 5 now reads:

“5.— Where a sentence of imprisonment is passed on any person by the District Court, the Court may order that the sentence shall commence at the expiration of any other term of imprisonment to which that person has been previously sentenced, so however that where two or more sentences passed by the District Court are ordered to run consecutively the aggregate term of imprisonment shall not exceed *two years*”.

(Emphasis added)

As originally promulgated s. 5 provided that the aggregate term of imprisonment could not exceed “twelve months”, and this was amended by s. 12 of the 1984 Act to “two years”.

67. This provision was considered by the Supreme Court in *Meagher v. O’Leary* [1998] 2 ILRM 481. In the District Court Mr. Meagher pleaded guilty to various charges related to the possession of illegal growth promoters for cattle – most of which related to growth promoters found on his premises, but two of which related to promoters found in the boot of his car. He received sentences totalling two years imprisonment. He appealed to the Circuit Court (where the court had the same sentencing power as the District Court) and His Honour Judge O’Leary sentenced him to 8 months to run concurrently in respect of 11 charges, and in relation to two other charges (relating to similar substances found on the same day in the boot of his car), he was sentenced to another 8 months, to run consecutively to the sentences on the 11 charges – thus he was to serve 16 months

in all. Mr. Meagher was refused *certiorari* in the High Court, and the Supreme Court (O’Flaherty J. *nem diss*) dismissed the appeal. In his judgment O’Flaherty J. refers to s. 5 of the Criminal Justice Act, 1951 as amended, and notes that –

“No submission was advanced before us that this amendment brought about by the 1984 Act was unconstitutional.”

He went on to reject the submission on behalf of Mr. Meagher that the two charges concerning the promoters found in the car boot “arose from the same transaction on the same date” and that the judge exceeded his jurisdiction in imposing consecutive sentences, stating –

“Since the offences are conceded to be separate and, since there is power in the judge to impose consecutive sentences so, however, that the aggregate does not exceed two years, then, *prima facie* the learned Circuit Court judge was acting within his jurisdiction.”

68. This is a complete answer to the appellant’s point. It means that even if it is assumed that the 14 dangerous driving charges relate to separate and distinct offences on the one day, and even if the appellant is found guilty on all charges, and even if the appellant is convicted in addition of the endangerment charge (which appears to be based on separate alleged facts), the District Court is limited in its sentencing to no more than two terms of imprisonment of 12 months and fines. In this respect it is of note that the charges all relate to motoring incidents on the one day, and the summonses bear a common Case Ref. No. 2013/199272; and the 14 dangerous driving charges would appear (although this will be a matter for the District Court based on the evidence before it) to arise out of one car chase. The effect of s. 5 (as amended) is that the District Judge is prohibited from imposing consecutive sentences of imprisonment totalling in excess of two years on these charges.

69. It must therefore be concluded that the trial judge correctly applied well-established legal principles. As the appellant has no right to a trial by jury, or to demand (or ‘elect’) a trial by jury,

in respect of either the summary offences of dangerous driving with which he is charged, or the offence of endangerment which is an indictable offence that is triable summarily but in this instance is charged summarily in the District Court, this appeal must be dismissed.

70. As this judgment is being delivered electronically it is appropriate that I indicate what order I would propose in respect of costs. As the DPP was entirely successful she is entitled to an order that the appellant do pay her costs of the appeal to be adjudicated by a Legal Costs Adjudicator in default of agreement. There should be no order in respect of District Judge Fahy who did not appear but whose interests were represented by the DPP as *legitimus contradictor*. If any party wishes to seek a different order they should email the Court of Appeal Office within 14 days of the electronic delivery of this judgment and set out the alternative order sought, and a short costs hearing will be arranged – and in default of any such communication the proposed costs orders will be made. If any party seeking an alternative costs order is unsuccessful they will be at risk of having to bear the costs of the further hearing.

Burns and O'Moore JJ. having read this judgment have indicated their agreement with same and the orders sought.