THE HIGH COURT
JUDICIAL REVIEW

[2022] IEHC 421
RECORD NO. 2014/788JR

BETWEEN

REGINALD CARROLL

APPLICANT

AND

DISTRICT JUDGE MARY FAHY AND DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Mr Justice Cian Ferriter delivered this 11th day of July 2022

Introduction

1. These are judicial review proceedings in which the applicant seeks relief in respect of criminal proceedings against him which are currently stayed before the District Court in Derrynae, Co Galway. I will come to the scope of the relief sought presently.

2. The criminal proceedings before the District Court concern alleged offences under s.53 Road Traffic Act 1961 as amended and under s.13 of the Non-Fatal Offences against the Person Act 1997 as amended. These offences are known as "dangerous driving" and "endangerment", respectively. The applicant was charged with these offences arising out of alleged dangerous driving and an alleged ramming incident involving his car and a Garda patrol car on 23rd April 2013 near Kilkieran, Cashel, County Galway.

3. The District Court proceedings have stood stayed since the grant of leave to apply for judicial review to the applicant by order of the High Court of 6th January 2015.

Applications before the Court

4. The hearing of the judicial review and the two related applications for discovery and for access to the DAR records of certain hearings before the High Court within the judicial review proceedings proceeded before me remotely (after some technical difficulties) on the afternoon of Thursday 23rd June and the morning of Friday 24th June 2022 last. The applicant represented himself in person and the DPP was represented by Niall Nolan BL. The hearing had been fixed to proceed remotely at the applicant's request.

5. I should note that for completeness that when the matter came on for hearing on Thursday, 23rd June 2022, the applicant made an application to Mr. Justice Meenan that the hearing be adjourned in circumstances where he said he was suffering from post-Covid fatigue. Mr. Justice Meenan was not satisfied with the adequacy of the medical evidence advanced by the applicant in support of his adjournment application. I should say that once certain technical difficulties which the applicant had in properly logging in to

the remote hearing were overcome, the applicant proved more than capable of presenting his oral arguments and submissions in a concise but comprehensive fashion.

6. During the course of the hearing before me, the applicant made reference to what I understood to be proceedings instituted by him before the European Court of Human Rights. I gave him liberty to supply the Court with a copy of the application form in respect of those proceedings. I also gave him liberty to submit references to parts of the transcript of one of the hearings in the proceedings (being a hearing before Ms. Justice Baker, then in the High Court) which related to comments made by Ms. Justice Baker about discovery in the proceedings. The applicant sent in material in respect of those matters by email shortly after the hearing. In addition to that material, the applicant sent in a request for orders for DARs of the mention of these proceedings before the Court on 10th June 2021 and enclosed a motion paper in respect of this matter. As this application was not before me at the hearing, I am not making any ruling on it in this judgment. The applicant also sought a DAR of the hearing before me on 23rd and 24th June 2022. I do not think it is appropriate to deal with this latter application until after the parties have had an opportunity to consider this judgment.

Objective of proceedings

7. The applicant frankly admitted in his oral submissions, as was confirmed by his detailed written submissions of 22nd June 2022, that his principal objective at the hearing was to get an order of prohibition/dismissal from this Court of the criminal charges pending before the District Court on account of what he contends are matters of serious wrongdoing on the part of the prosecuting Gardaí and others who have been involved in the criminal proceedings. Whether he can legitimately seek such orders in these proceedings is a matter I will turn to presently.

8. As part of that objective, the applicant brought two applications by motion within these proceedings. The first such motion was a motion for discovery pursuant to order 31 RSC, issued on 4th November 2021, in which the applicant sought discovery of an extensive range of material including forensic IT analysis of electronically generated statements of the prosecuting Gardaí/Garda witnesses; DAR recordings of the proceedings before the District Court and details of forensic evidence results recovered from the applicant's house on 24th November 2018 and 25th of August 2019. This application was grounded on an affidavit of the applicant of 4th November 2021. For ease, I will refer to this as "the discovery application".

9. The second motion was brought by notice of motion also filed 4th November 2021 also grounded on an affidavit of the applicant of 4th November 2021. In this application, the applicant seeks the transcript/the digital audio recording (DAR) of the hearing before the High Court in these judicial review proceedings on 10th February 2015 and also seeks "a copy of any correspondence sent by the registrar of the High Court to the District Court headquarters/Galway Court Service regarding the case as directed by the President of the High Court". This application was grounded on a contention that the President on that date confirmed that prohibition/dismissal was part of the leave granted on 6th January

2015. "The correspondence necessary to show the instruction by the President in relation to that direction" was also sought. For ease, I will refer to this as "the DAR application".

Material considered for this judgment

10. This judgment sets out my decision on the discovery application, the DAR application and on the substantive judicial review which I have arrived at following careful consideration of all of the papers in this matter. The papers that I have considered include:

- the original statement of grounds dated 19th December 2014;
- the transcript of the hearing of the leave application before Mr. Justice Barton on 6th January 2015 and the leave order of that date;
- the order of Mr. Justice Noonan of 26th January 2015 extending time for service of the originating notice of motion relating to the grounds upon which leave had been granted;
- the applicant's originating notice of motion in this judicial review which was returnable before the High Court on 10th February 2015 (the matter being dealt with by the then president, Kearns P., on that occasion);
- the applicant's amended statement of grounds dated 30th January 2015 and the applicant's verifying affidavit of that date;
- the order of 24th July 2017 joining the DPP as a respondent;
- the notice of motion and grounding affidavit in relation to the applicant's application to seek to amend his grounds for judicial review and seeking certain discovery which was returnable before the High Court on 6th February 2017 ("the amendment application");
- the transcript of the hearing of the amendment application which proceeded before Ms. Justice Baker in the High Court on 31st May 2017 and the order of that date refusing the applicant's application for amendment to the grounds and refusing discovery;
- the ex tempore judgment of Ms. Justice Baker in respect of the amendment application;
- the order of the Court of Appeal dated 1st March 2019 refusing the applicant's appeal from the order of Ms. Justice Baker of 31st May 2017;
- the Supreme Court's determination of 7th February 2020 refusing the applicant leave to appeal from the order of the Court of Appeal dated 1st March 2019;
- the DPP's Statement of Opposition filed 1st July 2019 and the verifying affidavit of Brian McLaughlin of the judicial review section of the office of the DPP in relation to same;
- further affidavits of the applicant of 8th October 2021 and 20th October 2021, and the exhibits thereto;
- the motions and affidavits in relation to the discovery application and the DAR application;

- the further affidavits of the applicant of 17th January 2022 and 28th April 2022;
- The material legitimately sent in by way of follow-up to the hearing as explained in paragraph 6 above.

11. I have also carefully considered the applicant's written submissions of 22nd June 2022 and the written submissions filed on behalf of the DPP, and the oral submissions of the applicant and counsel for the DPP at the hearing before me.

The factual background

12. The relevant factual background is as follows. The criminal proceedings came on before District Judge Mary Fahy in the District Court in Derrynae, Cashel, Co Galway on 13th November 2014.

13. In advance of that hearing, the applicant sent an email on 10th November 2014 to the court office responsible for the District Court proceedings seeking an adjournment of the case on various grounds, including that he was not in a position to obtain representation for the hearing and that the two prosecuting officers of An Garda Síochána were the subject of prior complaints. In this email the applicant stated "it is my contention that their [i.e. the two prosecuting Gardaí] actions of this date [23rd April 2013, the date of the incident giving rise to the criminal charges against the applicant which are the subject of the District Court proceedings] were predicated by a desire for revenge on someone whose vehicle they recognised as that of the complainant. This prompted them to invent an excuse to harass, turn and chase for this unlawful purpose, as they saw him driving perfectly legally on 23rd April 2013, creating a collision by them and needed them to invent a false scenario and set of charges to cover for the wrongdoing".

14. This email then referenced a complaint having been made by the applicant about this state of affairs to GSOC in July 2013, a subsequent alleged break-in to his house "and various other malevolent acts of harassment" over subsequent months. The applicant referenced a "Civil 'counter-action' in Galway Circuit Court now served on defendants including these officers" involved in his criminal case. The email went on to state that: "as this matter is not by any means a simple motoring case, having a distinct element of malevolent harassment at its core, its nature is something which should be fully explored, rather than constricted to a basic hearing of only the simple motoring facts. There are serious concerns if it is heard in front of a District Judge who refused point-blank to consider anything of this larger context last time. It will prevent a full exploration of the facts and consequently be detrimental to an effective defence." He went on to state that the hearing" really should be in front of a jury…who would be open to allegations of racially motivated harassment levelled in defence against these two officers".

15. The applicant in this email asked that the case not only be adjourned but also transferred to the Circuit Court for trial by jury, invoking his right to a fair trial under article 8 ECHR. He went on to allege lies and exaggeration in the prosecuting officers' statements as to the facts underpinning the criminal charges.

16. On 13th November 2014, Judge Fahy refuse to allow the matter to proceed by way of jury or to otherwise dismiss the case and she set the matter down for hearing early in 2015. These judicial review proceedings arise out of Judge Fahy's decision of that date.

The applicant's complaints

17. As can be seen from his email of 10th November 2014 quoted from above, the applicant believes that he is the victim of harassment by the Gardaí and has been unfairly targeted in the criminal proceedings. He says that this harassment is linked to a campaign of wider intimidation against him which has resulted in his house being the subject of an arson attack and violent assaults being perpetrated on him. In broad terms, the applicant alleges that the criminal proceedings issued against him constitute an abuse of process and involve perversion of the course of justice, including alleged fabrication of evidence by members of An Garda Síochána and inappropriate behaviour by various members of An Garda Síochána, court support staff and the District Judge dealing with the matter.

18. One of the applicant's complaints is that the District Judge was party to having his email of 10th November 2014 removed from the court file. The applicant emailed the relevant court administration office following the hearing on 13th November 2014, by email of 21st November 2014, complaining about the non-presentation of that email to the Judge despite his requests and alleging that this amounted to "conspiracy to pervert the course of justice, abuse of process and malfeasance in public office". The email referenced the applicant adding further causes of action to the Civil Bill previously issued in the Circuit Court.

Applicant's other proceedings

19. Among the complaints ventilated by the applicant in the papers before me is a complaint that the DPP has refused to initiate prosecutions in respect of the arson attacks on his home and violent attacks on him personally (which the applicant characterises as attempted murders). The alleged attacks on him took place on or about 24th November 2018 and the alleged arson attack on his home took place on or about 25th August 2019.

20. The applicant previously issued judicial review proceedings in relation to the DPP's decision not to prosecute those involved with these attacks, and also sought orders against District Judge Mary Fahy. The High Court (Mr. Justice Noonan) refused to grant the applicant leave to apply for the relief sought in those proceedings and his decision was upheld, following appeal to the Court of Appeal, by Mr. Justice Edwards (see judgment at [2019] IECA 258).

21. The applicant then brought further judicial review proceedings related to these same underlying events, in which he sought, inter alia, orders of mandamus relating to the investigation of the alleged assaults against him, including in relation to the forensic examination of material said to relate to those assaults. Mr. Justice Meenan refused relief in those separate judicial review proceedings in a judgment handed down bearing record number [2020] IEHC 715. In his judgment, Mr. Justice Meenan summarised the background to that judicial review as follows:

"1. The background to these judicial review proceedings is a long running serious dispute between the applicant and his neighbours. This dispute has erupted into violence on several occasions over the past number of years. These incidents, together with certain road traffic matters, have been investigated by An Garda Síochána as follows: -

(i) Alleged assault on the applicant on or about 23/24 November 2018. The file in respect of this investigation was furnished to the office of the third named respondent on 4 December 2019. A no prosecution direction issued on 21 January 2020;

(ii) A fire took place at the applicant's home on 25 August 2019. This matter was investigated and a file was furnished to the third named respondent. A no prosecution direction was issued on 9 July 2020;

(iii) The applicant was prosecuted in the District Court for dangerous driving contrary to s. 53 of the Road Traffic Act 1961 following a complaint made by one of his neighbours. He was also prosecuted for failing to have a valid certificate of road worthiness. On 26 September 2019, the applicant was convicted of both offences; and

(iv) The applicant is being prosecuted in the District Court for threatening behaviour contrary to s. 6 of the Criminal Justice (Public Order) Act 1994. This incident also concerned his neighbours. A bench warrant for the arrest of the applicant was issued on 25 July 2019 and he failed to appear for the hearing of the prosecution. The warrant was executed at Galway District Court on 13 November 2019 and the applicant was remanded on bail. This prosecution was due to be heard on 28 May 2020.

2. Arising from the incident of 24 November 2018, members of An Garda Síochána attended the applicant's property. Forensic evidence was gathered. However, a rock which the applicant wishes to be examined for forensic evidence was not part of this. This rock was posted by the applicant some six weeks after the alleged incident. While it was photographed at the scene of the alleged assault, the applicant, according to the affidavit of Inspector Peter Conlon of An Garda Síochána, never told the investigating officers that it was used as a weapon and no reference was made to it in the course of his statement.

3. The applicant appeared in person before this Court seeking certain reliefs by way of judicial review.

Earlier Judicial Review Proceedings

4. On 22 October 2018, the High Court (Noonan J.) refused to grant leave to the applicant to apply by way of judicial review for certain reliefs sought by him in an ex parte application. This refusal was appealed in the Court of Appeal and, on 21

October 2019, Edwards J. upheld the Order of the High Court. I refer to Carroll v. A Judge and The Director of Public Prosecutions [2019] IECA 258.

5. *In those judicial review proceedings, the applicant sought leave to apply for an order of certiorari quashing the decision of the therein second named respondent not to prosecute certain parties on foot of complaints made by the applicant concerning incidents of alleged harassment, assaults, trespass to his property and threats to kill him. The parties in question were the applicant's neighbours, already referred to. The applicant also sought reliefs relating to criminal proceedings before Clifden District Court, presided over by the first named respondent [District Judge Fahy]. The applicant complained that the first named respondent was, on two occasions, 22 February 2018 and 26 April 2018, requested to recuse herself on the grounds of alleged bias but that she refused to do so. I will be referring to the judgment of Edwards J. later in this judgment.*

6. *It is clear from reading the judgment of the Court of Appeal, and the papers filed by the applicant in the instant case, that there is an overlap between these proceedings and the earlier judicial review proceedings. It appears that the High Court, when granting leave in this matter, was not informed by the applicant of the earlier proceedings. Notwithstanding the fact that the applicant appeared in person, failing to inform the Court granting leave of earlier relevant proceedings is unacceptable."*

22. Mr. Justice Meenan refused the various reliefs sought which as noted included orders of mandamus related to the alleged failure of An Garda Síochána to preserve forensic results of those attacks. Those forensic results are also matters raised in these proceedings.

23. The applicant has brought other proceedings arising out of the underlying events. It appears that the applicant succeeded in quashing a conviction of him on 12th May 2016 for a failure to answer a bench warrant. The papers before me disclose that an order of *certiorari* against that conviction was conceded by the DPP in the High Court on 20th December 2016.

24. As already touched upon, the applicant issued Circuit Court proceedings against the Garda Commissioner and other parties relating to alleged wrongs committed against him arising from the events summarised above.

25. Among the exhibits to his affidavits before me was a judgment of Ms. Justice Pilkington in the Court of Appeal handed down on 2nd February 2022, wherein the Court of Appeal set aside an order of the High Court refusing the applicant leave under s.73 Mental Health Act, 2001 to issue civil proceedings against the doctor who examined him while he was in police custody in Clifden Garda station on 23rd April 2013. It appears that this examination led to the applicant's involuntary admission to the mental health unit of the University Hospital Galway in the early hours of 24th April 2013 pursuant to the provisions of the 2001 Act.

26. Finally, I should note that the applicant's exhibits included a number of apparent complaints to the European Court of Human Rights relating to the various judicial reviews and the authorities' handling of the investigation of the alleged assaults and arson attack. It would also appear from the papers that previous applications for DAR records of various court hearings have been made by the applicant in other proceedings.

Scope of these proceedings: the parties' headline positions

27. As can be seen from the brief description of the background context set out above, the applicant has generated a volume of legal proceedings with overlapping issues being raised in different proceedings by the applicant.

28. As I have already observed, it became clear during the course of the hearing before me, and my consideration of the papers in the matter (including the applicant's submissions) that the applicant wished to achieve the objective, in these judicial review proceedings, of obtaining orders which would have the effect of dismissing the underlying criminal proceedings relating to the alleged events of 23rd April 2013 (on the basis that they are an abuse of process and involve perversion of the course of justice) and that he wished to obtain the discovery and DAR records sought by him in the applications before me to allow him substantiate that fundamental case in dismissal. As the applicant put it in reply, he wished me firstly to accede to his applications for discovery and disclosure of the DAR records and then to adjourn the substantive judicial review application to allow for a barrister to be briefed with that material, supplemental affidavits to be filed and the substantive application for dismissal/prohibition to be determined at a later date.

29. The DPP's fundamental position in these proceedings is that it is simply not open to the applicant to seek to make that broader case as he previously sought to amend his grounds in this judicial review to include that broader case and he was refused that application by the High Court (Ms. Justice Baker), which refusal was upheld following appeal to the Court of Appeal and where the Supreme Court has denied leave to appeal to it from the Court of Appeal's decision.

Proper Parameters of this judicial review

30. In light of the DPP's position, and in any event, it is necessary to examine the proper parameters of what this Court is called upon to decide on these applications including the substantive application for relief by way of judicial review. This necessitates a brief analysis of the history of these judicial review proceedings to date.

31. The applicant's *ex parte* application for leave to apply for judicial review in these proceedings came before Mr. Justice Barton on 6th January 2015. In his initiating document, under the heading "Relief Sought", the applicant sought:

    (i) "Dismissal: Case in District Court to be dismissed by order of Certiorari" by reason inter alia of "abuse of process, perversion of the course of justice and misfeasance in public office".

    (ii) "Re-direction to trial by jury: case to be re-directed by order of mandamus…in event of refusal to dismiss"

(iii) *"Interim relief" (whereby a stay was sought on the District Court proceedings until the judicial review was decided)*

(iv) *"Evidence disclosure and receipt prior to prosecution" (this part referred to a GSOC report and findings, a Freedom of Information Act request and "all information requested as part of Civil Bill 1097/2014").*

(v) *"Deferral of future motoring proceedings"*

32. Following a hearing on the leave application before Mr. Justice Barton on 6th January 2015, Mr. Justice Barton only granted leave in respect of an application for *certiorari* of the decision of District Judge Fahy of 13th November 2014 refusing to allow the applicant to elect to trial by jury of the alleged offence pursuant to s.53 Road Traffic Act 1961 and the alleged offences pursuant to s.13 Non-Fatal Offences against the Person Act 1997 i.e. relief (ii) above modified so that the applicant could seek *certiorari* of the District Judge's decision refusing him a right of election to jury trial, as opposed to an order of mandamus in relation to the jury trial question. This is clear from the order granting leave dated 6th January 2015 and, indeed, the transcript of the hearing before Mr. Justice Barton on 6th January 2015, which was before me in evidence at this hearing.

33. The matter came back before the High Court on 10th February 2015. The applicant contended that on 10th February 2015 the President of the High Court indicated that the applicant could proceed with a challenge for an order of *certiorari* dismissing the criminal case against him on the basis that this issue had been held over during the course of the leave application before Mr. Justice Barton on 6th January 2015 and that the applicant was now free to also pursue that relief. The applicant raised this contention as part of his submissions to Ms. Justice Baker on an amendment application brought by the applicant within these proceedings, which came before Ms. Justice Baker for hearing on 31st May 2017, whereby he sought to add to the grounds on which the applicant had been granted leave by Mr. Justice Barton 6th January 2015 a claim for prohibition against the DPP from proceeding with the prosecution of the offences the subject of the criminal proceedings before the District Court.

34. Ms. Justice Baker did not accept the contention that the then President had given the applicant leave to pursue that additional ground on 10th February 2015. She ruled as follows:

> *"… Leave was granted to bring an application for judicial review by way of certiorari quashing the decision of… Judge Mary Fahy to prosecute Mr Carroll in regard to the offence in respect of which he claimed he had not been given his right of election to be tried by jury… The application to amend the grounds is an application, broadly speaking, to add a claim that there be an order of prohibition restraining essentially the DPP from prosecuting Mr Carroll in regard to road traffic offences… The first factual matter in respect of which Mr Carroll addresses me is that he says that on 10 February 2015 he applied to the then President of the High Court, Kearns P., for liberty to amend his statement of grounds. I am not satisfied that that is in fact*

*what happened on that day. This was the first return date of the JR and no application was made in the formal way in which this is required to be done by the rules of court to amend the grounds on that day. I also note - this is merely a note in passing -that the question of extending the grounds was not mentioned in the application grounded on affidavit, at a time when Mr Caroll was legally represented, by which he sought to join the DPP on 20th July 2016." (*transcript, page 39*)*

35. During the hearing of his amendment application before Ms. Justice Baker, on 31st May 2017, the applicant argued that Mr. Justice Barton had not considered his application for prohibition of the criminal proceedings. He described this to Ms. Justice Baker as "prohibition as in dismissal" (transcript, page 9). He made clear that the basis for his prohibition application was "fabricated evidence" (transcript, pages 3 and 10).

36. In her ruling, Ms. Justice Baker referenced the terms of the transcript of the hearing before Mr. Justice Barton on 6th January 2015. She ruled that when the applicant said to Mr. Justice Barton at that hearing that "he would confine it to that" he meant, in her view, "that he would confine it to seeking leave to bring application by way of *certiorari* quashing the decision to try him without the benefit of a jury" (transcript, page 40). She concluded that "I do not consider, as is said by Mr. Carroll, that what he is now seeking is merely a re-jigging or a reinstatement of the grounds or – as he put it later – a reinstatement of grounds that were already before Judge Barton. The ground seeking broad prohibition is not a matter that was before Judge Barton. He has given me no good reasons why I should amend the grounds" (transcript, page 42). Ms. Justice Baker reiterated that Mr. Carroll had conceded before Mr. Justice Barton that he would limit the relief he was seeking in these proceedings to that of *certiorari* of the decision not to afford him a right to trial by jury. She refused the relief sought.

37. Accordingly, Ms. Justice Baker having heard from the applicant and having heard from counsel for the DPP, refused to allow the applicant to add prohibition/dismissal grounds to the single ground he had been granted leave to advance in these proceedings, being that of the lawfulness of the decision not to afford him a right to trial by jury.

38. The applicant made the point that Ms. Justice Baker stated during the course of the hearing on 31st May 2017 that discovery was "for another day". The applicant contends that this demonstrates that the door had not been shut on him seeking to advance his broader case for prohibition/dismissal. However, in my view, it is clear from the terms of the transcript that Ms. Justice Baker was holding that the question of discovery in principle was for a later stage in the judicial review process. This is, of course, correct in principle. It would be open to any applicant for judicial review, who has been granted leave to apply for judicial review, to seek discovery prior to the substantive hearing of the judicial review if, but only if, the applicant is in a position to demonstrate that the discovery sought is relevant and necessary for the determination of the issues on which leave has been granted and which are the subject of the substantive judicial review hearing. For reasons which I shall come to, that is not the case in respect of the discovery now sought by the applicant in the discovery application before me.

39. As discussed above, it is clear from the transcript of the hearing before Ms. Justice Baker and from the terms of her ex tempore decision on 31st May 2017 that she was not permitting the applicant to make a case in these judicial review proceedings beyond the single issue on which he had been granted leave to apply for judicial review i.e. the question of the lawfulness of the decision of District Judge Fahy not to provide him with a right to elect for jury trial of the criminal charges before her.

40. The applicant appealed the decision of Ms. Justice Baker to the Court of Appeal. In an *ex tempore* decision given on 1st March 2019, the Court of Appeal (Kennedy J.) refused the appeal thereby upholding the decision of Ms. Justice Baker. Ms. Justice Kennedy held (at paragraph 25) that "I can find no error in the decision of the learned High Court Judge. She carefully considered Mr. Carroll's application, she applied the correct legal principles and she properly dismissed the application".

41. On 7th February 2020, the Supreme Court issued a determination refusing the applicant's application for leave to appeal to the Supreme Court from the order of the Court of Appeal of 1st March 2019.

The issue

42. All of the foregoing is important as it makes clear that what falls to be decided by me at the substantive hearing of the judicial review application is confined to the net issue of whether or not the District Judge erred in law on 13th November 2014 in setting down the criminal proceedings for hearing in the District Court without providing the applicant with a right to elect for trial by jury in respect of the two sets of offences. This issue is a legal issue.

43. I am satisfied that the applicant has sought to advance arguments and rely on material which goes far beyond the net issue on which he was granted leave to apply for judicial review. 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.

Discovery and DAR applications

44. 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.

Decision on the substantive Judicial Review

45. In my view, the applicant's contention that he was wrongly denied the right to elect for trial by jury in respect of the offences with which he is charged is misconceived as neither the offence of dangerous driving contrary to s.53 Road Traffic Act 1961 as amended ("s.53 of the 1961 Act") nor the offence of endangerment contrary to s.13 Non-Fatal Offences against the Person Act 1997 ("s.13 of the 1997 Act") provides for a right of election.

46. S.53 provides as follows:

"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 opinion that a person has committed an offence under this section, he or she may arrest the person without warrant."

47. Where no death or serious bodily harm is in issue, as here, alleged offences under s.53 of the 1961 Act are summary offences which can only be tried summarily in the District Court. There is no right to trial by jury vested in an accused in respect of such offences.

48. The terms of s.13 of the 1997 Act are as follows:

"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."

49. S.13 of the 1997 act is known as a "hybrid" offence. In contrast to other "hybrid" offences (such as offences under the Criminal Justice (Theft and Fraud Offences) Act 2001) where an accused is provided with an express statutory right to elect to trial by jury, no statutory right to elect for trial by jury is conferred in respect of the offence of endangerment under s.13 of the 1997 Act. Accordingly, once the DPP elects to proceed summarily with the trial of such an offence, there is no statutory right invested in the accused whereby he or she can elect for a jury trial in respect of the relevant charges.

50. The applicant sought to rely on *Feeney v Clifford* [1989] IR 668. In that case, the offences in issue were indictable offences which could be tried summarily if the District Court decided the offences were minor and fit to be tired summarily. The District Judge had decided that the offences were minor and fit to be tried summarily. The accused acceded to the District Court's jurisdiction and pleaded guilty. When the hearing as to sentence commenced, the District Judge sought to send the accused forward for trial in the Circuit Court on the basis that he believed a prison sentence in excess of the District Court's jurisdiction was warranted in light of the accused previous convictions. The Supreme Court held that the District Court had no jurisdiction to reverse its decision, post-conviction, on trying the matter summarily. As can be seen, the facts were very different in that case to the facts here and that authority does not avail the applicant's case as to a right to elect for jury trial where the statutory provisions governing the offences in question provide for no such right.

51. As noted by O'Malley, The Criminal Process (1st edn., 2009), at paragraph 9.12, where a statutory provision creates a criminal offence which allows for prosecution either summarily or an indictment, with a lower maximum penalty in the case of summary conviction, the DPP is the entity who decides on the mode of prosecution; once the DPP has decided on summary trial, the accused is not entitled to elect for a jury trial. This was confirmed by the Supreme Court in *State (McKevitt) v Delap* [1981] IR 125.

52. As the DPP has elected to try the hybrid offences under s.13 of the 1997 Act summarily, the trial must proceed as a summary trial in the District Court, where there is no right to jury trial vested in the accused. The District Court, of course, retains an overriding

jurisdiction to send a matter forward for jury trial in the event that the District Court forms the view in the particular circumstances of the case that the offences are not minor offences fit to be tried summarily. The District Judge did not decline jurisdiction on that basis in respect of the offences in issue here. Accordingly, the key point for present purposes is that the applicant has and had no right to elect for jury trial in respect of either of the category of offences with which he stands charged in these proceedings and the District Judge accordingly did not act unlawfully in not providing him with such an election.

Concluding remarks and Orders

53. In the circumstances, for the reasons outlined above, I refuse the relief sought in respect of the discovery application and the DAR application. I also refuse the relief sought in respect of the substantive judicial review application for *certiorari* of the decision of the District Judge of 13th November 2014 fixing a hearing date for the trial in the District Court without giving the applicant an election to trial by jury.

54. It is important to emphasise that the effect of this decision is that the trial of the summary offences that the applicant has been charged with will now proceed to hearing in the District Court. The applicant will of course be entitled to a trial in the District Court in accordance with law. He is free to advance such defences as are open to him in respect of those charges. He is free to test the reliability and weight of the evidence offered by the prosecuting gardai against him. He is free to make whatever submissions are legitimately open to him in defence of those charges. The applicant clearly believes that the evidence proffered by the prosecution in support of the charges does not stack up. He is fully entitled to ventilate his position in that regard at his trial.