[2026] IEHC 384

THE HIGH COURT

JUDICIAL REVIEW

RECORD NO. [2025/1359 JR]

BETWEEN

G. D.

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 17th day of June, 2026

INTRODUCTION

1. This judgment concerns an application by way of judicial review for orders permanently restraining the further prosecution of the applicant, with the consequence that a pending trial will not take place. The applicant faces a number of charges that in general terms concern allegations that he presented false instruments to KBC Bank and Permanent TSB Bank on various dates between December 2016 and October 2017. The application in this case was preceded by applications in July 2025 to the judge presiding in the Circuit Criminal Court in the Circuit where the trial was scheduled to occur. Those applications involved the applicant arguing that a fair trial was not possible. That argument was grounded on a number of contentions that broadly related to the disclosure made by the prosecution, an asserted failure to preserve certain CCTV footage in a timely manner, and a variety of assertions regarding the response of the prosecution to various requests to seek out or provide evidence and information. After considering the arguments, the learned judge, who was familiar with the case, was satisfied that the trial should proceed. The applicant argued, for the reasons that he set out, that contrary to the conclusion of the learned Circuit judge, a fair trial on the charges was not possible.

2. Despite having previously been represented by lawyers, at the hearings in July 2025 and before this court the applicant represented himself. At the hearing before this court, the applicant applied for orders that his identity not be disclosed on the basis of the nature of the proceedings and that in the course of the application, and in his papers, he disclosed certain medical / mental health concerns. In circumstances where the respondent was neutral on that issue the court has decided that the identity of the applicant should not be disclosed.

3. As will be discussed the arguments made by the applicant were very wide ranging, engaged in considerable detail with the concerns that he had held in relation to the trial, and drew on many authorities. The reality is that the case law has developed significantly over the years and certain authorities no longer bear the weight asserted for by the applicant. The modern case law dealing with applications to prohibit or stay a pending criminal trial strongly emphasise that the court of trial is best placed to guarantee the fairness of the trial process, and that the High Court exercising its judicial review jurisdiction should only intervene in exceptional cases where the court is satisfied that there is a real risk of an unfair trial.

4. For the reasons explained in this judgment I consider that the applicant has not persuaded the court that the relief should be granted, and I am satisfied that the trial judge will be in a position to ensure that the applicant has a fair trial.

THE PROCEEDINGS

5. The applicant in this case was granted leave to apply for judicial review by the High Court on the 11 September 2025. Leave was granted to apply for the following reliefs:-

> "*(i) An order of prohibition restraining further prosecution of Bill No. TNDP0040/2021.*
>
> *(ii) A declaration that, due to the Respondent's continuing failure to disclose core material, continuation of the prosecution of Bill No. TNDP0040/2021 would violate the Applicant's right to a fair trial under article 38.1 of the Constitution and article 6 ECHR.*
>
> *(iii) An order of certiorari quashing the ruling of the 31st of July 2025 refusing a permanent stay, in the alternative, an order remitting the matter for reconsideration with reasons and in accordance with law; together with such consequential directions as the Court considers appropriate.*
>
> *(iv) An interim order is sought under O. 84, r. 20(8) staying all further steps in Bill No. TNDP0040/2021 pending determination of these proceedings or further order, including any listing for trial or call over on the 7th of October 2025 and any step to fix a trial date, issue directions, empanel a jury, or otherwise advance the prosecution.*
>
> *(v) A direction under Order 84, r. 27(2A) (b) the Registrar of the Criminal Circuit Court at* [identified venue] *and the registrar of the Criminal*

Circuit Court at [identified venue] *to produce to this Court the record/DAR of the hearing and ruling of 10th July 2025 and of 31st July 2025 forthwith for the purpose of these proceedings, with liberty to lodge a transcript and liberty to apply on short notice for further directions following production.*

(vi) Liberty to amend these proceedings and to file supplemental affidavits, including (i) upon receipt of the DAR of the hearing and ruling of 10th of July 2025 and hearing of the motion to stay proceedings of 31st July 2025, (ii) upon further disclosure, or (iii) upon securing legal representation including any grounds arising from the DAR/record when produced and from any further disclosure liberty to join the Commissioner of An Garda Síochána as a party if required.

(vii) An order for anonymity and/or reporting restrictions as this Honourable Court deems appropriate, having regard to the sensitive psychological and medical exhibits engaged.

(viii) An order certifying these proceedings, as eligible for Legal Aid - Custody Issues Scheme (if appropriate), or such directions as may be necessary."

6. The grounds in respect of which leave to apply for judicial review was granted are set out in the statement of grounds which was filed on the 11 September 2025. As noted above, the applicant represented himself. The manner in which the case was presented suggested some degree of legal input, however the papers were presented in a way that would not be the case if proper legal representation had been available. Having regard to the manner in which the statement of grounds was set out, the complaints made by the applicant can be grouped under the following headings. First, it is asserted that the respondent was in continuing breach of a direction or a general obligation to disclose matters to the applicant in relation to his trial under Bill No. TNDP0040/2021. Second, there was prosecutorial delay. Third, there was a failure on the part of the investigating Gardaí to seek out and preserve relevant evidence in a timely manner with the result, in particular, that certain CCTV evidence was no longer available. Fourth, it was contended that on the 31 July 2025 the Circuit Criminal Court refused an application for a stay on the proceedings, and it is contended that that refusal was both irrational and unsupported by reasons.

7. The statement of grounds goes on to provide a number of what are described as particulars of the difficulties encountered by the applicant and the reasons why he states he should be entitled to the relief sought. To a large extent rather than simply summarising the legal grounds, these stray into the area of legal submission and will be dealt with in the course of describing the legal arguments that were made.

8. The respondent filed a statement of opposition on the 25 November 2025. In that statement, by way of summary, the respondent contends that the decision of the learned Circuit Judge on the 31 July 2025 was appropriate and within jurisdiction and adequate reasons were given for the refusal to stay the prosecution. In relation to disclosure, it was said that the charges against the applicant were numerous and necessitated a complex investigation involving voluminous documentary evidence. The respondent accepts that disclosure is an ongoing process and will be completed prior to trial. Significantly the respondent contends that the application for judicial review is premature and that the matters that he raises are more appropriately matters to be dealt with in the first instance by the trial court. In that regard the respondent denies that there are exceptional circumstances to justify any order of prohibition or an injunction in respect of the applicant's trial.

RULING ON THE MOTION BROUGHT BY THE APPLICANT AT THE HEARING

9. In the course of the hearing the applicant brought a motion seeking orders in effect to amend his statement of grounds to include orders in effect restraining the State Solicitor from further participating in his trial.

10. The applicant's arguments were predicated on the basis that the State solicitor acted on his behalf in relation to minor criminal proceedings brought against the applicant in 2018. Throughout the course of his representing the applicant, it is argued that the solicitor came into possession of sensitive information which undermines the ability of the applicant to obtain a fair trial in relation to these underlying charges to these proceedings. The applicant considers the risk of unfairness is brought to life by virtue of opinions he claims were set out in an affidavit of this solicitor acting in his capacity as state solicitor. The applicant did not substantiate his evidence by reference to the contents or broad parameters of the sensitive information to which he was referring.

11. The respondent strongly contested the amendment application on the basis that if the applicant were subsequently successful in obtaining relief under the amended grounds, the affidavit evidence adduced would effectively be struck out in its entirety and the proceedings would be commencing from scratch. Further, the respondent takes issue with the timing of this application at the eleventh hour, arguing that any issue the applicant had with the State solicitor was an issue readily known to the applicant for months in advance, including periods in which the applicant was legally represented. For this purpose, the respondent notes five previous occasions where the State solicitor appeared in this matter and where pertinently, the applicant did not raise any issue to his involvement.

12. In response, the applicant relies on the fact that he has limited legal knowledge and was not aware of the importance or the precise role of a solicitor within the prosecution of proceedings, suggesting that he believed the investigating Garda to play a much larger role.

13. At the hearing of the application, I concluded that the application to amend the statement of grounds should be refused and the reasons were provided *ex-tempore.* As explained to the parties, I considered it appropriate to articulate these reasons within the written judgment for ease of the parties.

14. The test for applications to amend is that set out by Humphreys J. in *B.W. v. Refugee Appeals Tribunal* [2015] IEHC 725. Humphreys J. summarises the three elements of the test at para. 4 of his judgment:

> *Firstly, that the point should be arguable (para. 38), secondly, that there be an "explanation" for the point not having been pleaded (para. 39), and thirdly, that the other party should not be unfairly prejudiced (see para. 32), which I consider, given the court's power to remedy any unfairness, would in practice amount to a test that he or she should not be irremediably prejudiced.*

15. In the first instance, I do not accept that the applicant has an arguable point. The State solicitor averred that he had no records of and did not recall the applicant or any particular details of the applicant's case. This was due to the fact that the type of proceedings in which the State solicitor acted for the applicant were very minor proceedings of which the solicitor might advise on several charges on any given day. The court accepts that this is an entirely reasonable explanation given the nature of the proceedings as well as the passage of time.

Further, it is difficult to perceive what information could possibly have been revealed to the solicitor such that it would undermine the fairness of the awaited trial.

16. Even if it is accepted that such information was revealed to the State solicitor during the course of consultations, it stands to reason that the applicant would be alive to this issue from the earliest involvement of the State solicitor in the underlying proceedings. Further, this would contradict the applicant's claim that he was unaware of the solicitor's central involvement to the prosecution of the case where he was evidently aware of the importance of the solicitor in defending the prior charges. The correspondence from the State solicitor clearly bears the name of the solicitor and it is beyond reason that the applicant would spontaneously only become aware of this at the eleventh hour.

17. The prejudice to the respondent is also clear. The amendment, were it to be allowed, would pose the risk of setting at nought the affidavit evidence advanced by the respondent in this application for judicial review. This would cause clearly a remarkable degree of prejudice to the respondent who would obviously not be in a position to resist the proceedings and would, if the court permitted, be required to adduce such evidence from scratch.

18. For the reasons set out, I was satisfied to refuse the application to amend the statement of grounds.

THE CHARGES FACED BY THE APPLICANT

19. The charges faced by the applicant are set out in Bill No. TNDP0040/2021. The Bill itself comprises 49 separate counts. For the purposes of these proceedings, the counts can be summarised as involving allegations that between December 2016 and October 2017 the applicant committed offences contrary to provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001. The essence of the prosecution are allegations that the applicant made false instruments with a view to inducing KBC Bank and Permanent TSB to make loans. The applicant denies the charges.

THE APPLICABLE LEGAL PRINCIPLES

20. Before addressing the substance of the application and the grounds set out by the applicant, which involved a high degree of repetitive and argumentative material, it would be helpful to consider the principles which ought to be applied by a court when an applicant seeks a stay of criminal proceedings. At a very high level, regardless of the outcome of this case, the burden will remain on the prosecution to prove the guilt of the applicant beyond reasonable doubt. That proof will have to be established by reference to admissible evidence, and the issues of fact will be determined by the triers of fact. The trial judge will have to ensure that the trial is fair. In a very broad way, that will be achieved by providing rulings on applications that may be brought in relation to admissibility and other matters, and by providing clear and fair assistance to the jury on questions of the reliability of and weight to be attached to evidence.

21. As noted, the complaints of the applicant concern allegations of prosecutorial delay, and allegations of prejudice caused by a failure to make proper disclosure. Intertwined with those complaints is a suggestion that certain material which would have been available is no longer available because of the actions of the investigating and prosecuting authorities.

22. As a starting point, I propose to adopt the logical approach taken by Simons J. in *M. v. Director of Public Prosecutions* [2025] IEHC 512. Before considering the question in detail of the substantive allegations made by the applicant, it is necessary to consider the question of the proper forum in which complaints relating to the fairness of a trial of this nature generally should be addressed and how that task should be approached.

23. In *M. v. DPP*, and reflecting the general thrust of the case law in this area, Simons J. noted:

> "*39. The modern case law indicates that the assessment of whether there is a real or serious risk that an accused person, by reason of prosecutorial delay, would not obtain a fair trial is quintessentially a matter for the court of trial. The court of judicial review should only intervene in very clear-cut cases in which any potential unfairness will not be affected by the development of the evidence at the trial.*"

24. A review of the relevant case law makes clear that the observations highlighted above are entirely correct. The more recent Supreme Court jurisprudence emphasises that, save in exceptional cases, complaints in relation to the preservation or disclosure of evidence are matters which should be left to the court of trial rather than addressed by way of a judicial review pre-trial. Again, that principle derives from the identification that the primary burden of ensuring that the right to a fair trial is vindicated lies on the court of trial, and that intervention by way of judicial review and an order of prohibition will only arise in exceptional cases. A critical feature of that approach is that if a concern arises that a trial judge has not properly addressed issues that go to the fairness of the trial process, the accused also has the entitlement to raise those issues on an appeal.

25. The principle was described in *Byrne v. Director of Public Prosecutions* [2011] 1 I.R. 346 by O'Donnell J., as he then was, at paras. 19 and 20. There, the court stated:-

> "*In my view, having considered the decided cases, the position has now been reached where it can be said that other than perhaps the very straight forward type of Braddish v. Director of Public Prosecutions [2001] 3 IR 127, <u>it would now require something exceptional to persuade a court to prohibit a trial</u>. This in my view is in accordance with principle. The point was made in McFarlane v Director of Public Prosecutions [2006] IESC 11, [2007] 1 IR 134 that the fact that an applicant was unsuccessful in judicial review proceedings did not detract from the power and duty of a court of trial to assess the case developed at the trial. At p. 147 of his judgment Hardiman J., (with Murray CJ, Geoghegan and Fennelly JJ concurring) stated that the court of trial*
>
> > *'[34]…will be able to assess whether there is indeed a prima facie case at the appropriate stage. More than that it will be able to assess, on the evidence as it actually develops, whether there is any unfairness to the applicant, incapable of remedy by the trial court, for which the prosecution is responsible. Its powers in this regard are wholly unaffected by the result of the present application".*
>
> *This, in my view, is an important observation. The constitutional right, the infringement of which is alleged to ground an applicant's entitlement to prohibit a trial, is the right to a fair trial on a criminal charge guaranteed by articles 38 and 34 of the Constitution. <u>The manner in which the Constitution contemplates</u>*

that a fair trial is normally guaranteed is through the trial and, if necessary, appeal processes of the courts established under the Constitution. The primary onus of ensuring that that right is vindicated lies on the court of trial, which will itself be a court established under the Constitution and obliged to administer justice pursuant to article 34. It is, in my view, therefore, entirely consistent with the Constitutional order to observe that it will only be in exceptional cases that superior courts should intervene and prohibit a trial, particularly on the basis that evidence is sought to be adduced (in the case of video stills) or is not available (in the case of CCTV evidence itself)." [emphasis added]

26. In addition to explaining why orders prohibiting or staying a trial should only be made in exceptional circumstances, the Supreme Court recently has reiterated the various tools and approaches available to a trial judge to ensure fairness. The general principles were reiterated in a judgment delivered by O'Donnell J. in the *DPP v. CC* [2019] IESC 94, [2024] 3 I.R. 291. That case concerned an appeal in a case involving historic child abuse. In his judgment with which Charlton J. and O'Malley J. agreed, at para. 148 O'Donnell J. identified a number of guiding principles to assist trial judges:-

...

"(i) the jurisdiction to determine whether it is just to permit a trial of an accused person on historic allegations to proceed, is one normally best conducted at the trial;

(ii) the decision the trial judge should make is whether he or she is satisfied that it is just to permit the trial to proceed;

(iii) the obligation on the trial judge is to make a separate and distinct determination in this regard, and the trial judge must do so conscientiously, in the light of everything that has occurred at the trial;

(iv) the test to be applied does not involve any assessment of the guilt or innocence of the accused, which is a matter for the jury, but rather the fairness and justice of the process by which it is sought to determine that matter; and

(v) while an appellate court must recognise that a trial court has particular advantages in the making of this assessment, the decision of a trial court is subject to appeal, and trial judges should therefore set out clearly the considerations leading to the conclusion that it is or is not just to permit the trial to proceed."

27. In the same appeal, O'Malley J. elaborated on the issue, stating at para. 4:

"*In summary, Clarke C.J. has said that the task of the trial judge, when considering an application of this nature, will involve an assessment of the prosecution case. There must, of course, be sufficient evidence for a properly instructed jury to convict the accused, since otherwise he or she will be entitled to a direction in any event. Assuming that this threshold is met, the trial judge must next consider the evidence said to be missing. What is required here, if the accused is to succeed in the application, is a legitimate basis on which it can be said to be reasonable to infer that particular evidence, potentially favourable to the defence, might have been given had the trial taken place at an earlier stage. If the prosecution case is very strong, then the evidence said to be missing would need to be such that there was a real possibility that it could influence* *the decision of the jury notwithstanding the strength of the prosecution case. A theoretical possibility that the absence of some tangentially material piece of evidence might render the trial unfair is not enough. It is necessary to look at the case in the round, to have regard to the likelihood of evidence favourable to the defence being genuinely lost by reason of the lapse of time and also to have regard to the role which the evidence might reasonably have been expected to play at the trial, in the light of the prosecution case as it actually appeared at the trial. The issue to be determined is whether the accused has lost the real possibility of an obviously useful line of defence. The task of the trial judge is to determine whether the trial is fair, rather than whether the accused is guilty or innocent. The burden in such an application is on the accused, who may be able to make the case on the basis of the evidence already adduced by the prosecution or may need to adduce defence evidence. It may be necessary to call evidence in absence of jury*."

28. Hence, the Supreme Court has highlighted that the trial judge has ample resources to ensure that there is a fair trial, and moreover, because of their ability to monitor and supervise the course of the trial is far better placed than this court to respond to any potential unfairness that may emerge.

29. The effect of that approach can be illustrated by two recent decisions of the Court of Appeal relating to allegations that lapse of time between the date of the alleged offences and the likely date of trial would give rise to a real risk of an unfair trial.

30. In *X. v Director of Public Prosecutions* [2020] IECA 4, the Court considered an appeal from a decision made by the High Court refusing an injunction restraining the director from prosecuting the appellant in respect of 105 charges of historic sex abuse. As noted in her judgment, Donnelly J. identified that the parties were in agreement that the starting point for the law relating to delay was the decision of the Supreme Court in *SH v. DPP* [2006] 3 I.R. 575 which identified the legal test for determining whether a criminal trial should be prohibited on the grounds of delay as:

> "*The issue for a court is whether the delay has resulted in prejudice to an accused so as to give rise to a real or serious risk of an unfair trial. The court does not exclude wholly exceptional circumstances where it would be unfair or unjust to put an accused on trial*."

31. The court in *X.* also acknowledged the observations of Murray C.J. in *S.H. v. DPP* where he noted that the absence of a statute of limitations providing that after a stated number of years an offence may not be prosecuted means that each case must fall to be considered on its own circumstances, and the court may not adopt a policy in respect of establishing a time limit for the prosecution of historic offences. Accordingly, it was necessary to engage in a consideration of the factual basis for the assertions in that case. The Court noted that, in the case before it, the time at issue was not exceptional even if it was towards the higher end of the timeframe for the prosecution of offences. In addition, it was noted that the applicant in that case had no particular vulnerability in the sense that he was able to engage with the matters in issue. As noted by the court at para. 26:

> "*He has no particular vulnerability. Although he seeks to rely on ill health as a ground, he did not have any particularly severe or even unusual illnesses prior to these proceedings being commenced. It appears that he may have suffered*

some stress from being accused of these offences but that in itself is not unusual. No evidence was placed before the High Court as to any particular effect of that stress on him over and above what might be anticipated for a person who is shocked by allegations being made after such a long lapse of time."

32. The Court went on to consider the core question of whether there was a real risk of an unfair trial. Again, the Court emphasised that each case must be considered on its own circumstances and that no two cases will have identical facts. It is a matter therefore for each court to assess the impact of the absence of particular persons on the fair trial in each particular case. The court identified that the appellant had not identified any particular evidence that deceased persons may have given and that the appellant had essentially failed to engage with the facts.

33. The Court of Appeal noted that, since the arguments in that case were heard, the Supreme Court had delivered the judgment in the *People (DPP) v. CC* [2019] IESC 94 where the Supreme Court identified that the position has been reached where difficulties in relation to cases of old allegations were best dealt with at the court of trial. In that light, Donnelly J. cautioned at para. 40:-

> "*40. Following on from People (DPP) v. C.C., those who wish to challenge their prosecution on the grounds of delay may be well advised to think twice before proceeding to judicial review*."

34. A similar outcome was reached in *A.T. v. the Director of Public Prosecutions* [2020] IECA 6, where Edwards J. for the Court of Appeal analysed an appeal from a decision in the

High Court prohibiting the DPP from further prosecuting the proceedings. In that case, the accused was indicted in the Central Criminal Court. There was one case of count of rape and 36 counts of sexual assault, and they were alleged to have been committed over a three-year period between March 1976 and February 1979. The High Court decision had rested on a combination of factors, being that the alleged offences were said to have occurred some 40 years previously and that the applicant had complained of the loss of four members of his extended family. The High Court found those factors gave rise to a real risk of an unfair trial.

35. The Court began by observing that the Supreme Court had repeatedly noted that when there is an application to prohibit or injunct a trial on the grounds of delay the inquiry which should be made is whether the degree of prejudice arising from the delay is such to give rise to a real or serious risk of an unfair trial.

36. Edwards J. at para. 48 noted that the issue of prejudice will depend upon the circumstances of the case. In a similar way to the judgment of Donnelly J. in *X* referred to above, the Court of Appeal in *AT* noted the then recent judgment in *DPP v. CC* [2019] IESC 94. Having considered the observations made in the judgments of O'Malley J. and O'Donnell J. in that case, the Court of Appeal went on to consider the specific prejudice which had been claimed in the case before it.

37. The Court considered the factual claims being made in the case, and, it would be fair to say, it was not impressed that the accused had made out a case that there was a real risk of prejudice. Essentially, the complaints made by the accused were seen as matters that could have been considered at the trial, and the Court of Appeal noted that given the antiquity of the case the trial judge was to exercise heightened vigilance to ensure that the respondent received a fair trial. The Court noted that it would be open to the respondent to make a *P.O'C* type application (referring to *P.O'C v. Director of Public Prosecutions* [2000] 3 IR 87) at any stage during the trial, and if he did so it would be for the trial judge to deal with it appropriately adopting the approach set out by the Supreme Court in the *People (DPP) v. CC*.

FACTUAL MATTERS AND CHRONOLOGY

38. Bearing in mind the clear guidance from the Supreme Court and Court of Appeal set out above, I will now consider the factual issues and arguments raised by the applicant. The purpose of this exercise is not to rehearse each and every matter of concern set out by the applicant in his extensive papers. Instead, having read the applicant's papers in some detail, the court will consider the arguments made by reference to what I consider to be the key factual assertions with a view to considering if this case can be characterised as a clear cut instance of one of the exceptional cases where there is a real risk that a fair trial cannot be achieved.

39. In their written legal submissions, the respondent set out a chronology of events which from my review of the papers appears to constitute a reasonable and accurate summary of matters. The chronology demonstrates that the offences with which the applicant is charged are alleged to have occurred between December 2016 and October 2017. A book of evidence was served on the 6 December 2021.

40. The applicant provided his own more extensive chronology, as an appendix to his very extensive 68-page written submissions with a word count of 38,254 words. The chronology runs to over five pages and demonstrates that the applicant in fact has a very detailed knowledge and understanding of the detail of the investigation conducted in respect of the alleged offences. The applicant highlights, for the purposes of an issue that will be addressed later in this judgment, that, prior to the events that gave rise to the charges, he was the subject of an involuntary detention pursuant to the provisions of the Mental Health Act 2001 in October 2016, and the process began when he presented to a local garda station. As part of his chronology, the applicant asserts that following communications from KBC Bank to An Garda Síochána concerning fraudulent loan applications in June and October 2017, and following a report from Permanent TSB in October 2017, An Garda Síochána were on notice of a need to preserve CCTV records. In addition, he highlights that, on the 14 November 2017, a District Court search warrant was issued by now deceased Judge McGrath, and on foot of that search warrant, a search was conducted of his home on the 16 November 2017.

41. The applicant asserts that there was no evidence of investigative activity in 2018 and some limited activity in 2019. He then moves to 2021. A new investigating garda was assigned and statements were taken from various potential witnesses, which led to the book of evidence being served on the applicant on the 6 December 2021. As noted in the respondent's chronology, on the 10 December 2021, the first disclosure request was sent to the respondent. Despite a number of further disclosure requests, the first response from the respondent to the disclosure requests occurred on the 23 November 2022.

42. On the 31 January 2023 the applicant's then solicitors came off record. Throughout 2023 and going into 2024, the applicant made a number of further disclosure requests.

43. On the 30 January 2025, new solicitors for the applicant came on the record and thereafter there was a number of court appearances. On the 28 May 2025, the applicant sent a disclosure request to the respondent by email and in and around the same time the applicant's then solicitors came off the record. On the 11 July 2025, the respondent replied to the applicant's disclosure request confirming that the majority of requests were not matters for disclosure with the remaining requests already having been furnished. A full list of disclosure furnished by the respondent to date was appended to that correspondence. On the 10 July 2025 there was a hearing before Judge Staines following which, on the 16 July 2025, a further disclosure request issued. On the 24 July 2025, the State Solicitor indicated that certain matters were still awaited, including the sworn information grounding the 2017 search warrant. On the 31 July 2025 the applicant's application seeking a permanent stay was heard by Judge Staines and refused. I will address that application in more detail below.

44. It seems clear from the chronology that after leave to apply for judicial review was granted by the High Court in September 2025, further materials were provided by the prosecution to the applicant. As part of that disclosure, there is a statement from a detective dated the 14 November 2025. That statement explained that CCTV footage had been sought by him in 2021, but he was informed that footage had only been retained for 28 days and therefore there was no CCTV footage available.

THE APPLICATIONS IN THE CIRCUIT CRIMINAL COURT

45. The immediate actions that precipitated these proceedings were two applications by the applicant to the Circuit Criminal Court in the relevant area on the 10 and the 31 July 2025. In the first application, the learned Judge addressed disclosure issues that had been raised in correspondence with the State Solicitor. The court was careful to ensure that the application was dealt with by way of oral submission so that the DAR could capture the full discussion.

46. It is apparent from the consequent DAR, that the applicant had written to the State Solicitor and had received a reply with which he expressed dissatisfaction. The overall stance on behalf of the prosecution was that full disclosure had been made (twice, in fact) of all potentially relevant material, and that there was no obligation on the prosecution to investigate all matters that the applicant sought fit to raise.

47. The first issue related to the matter of the applicant's admission to hospital pursuant to the provisions of the Mental Health Act 2001. The applicant contended that the circumstances of his admission were relevant in the sense that the gardaí involved in his subsequent arrest and questioning in relation to the current charges were on notice of his psychological vulnerability. The State Solicitor's position was that the applicant had presented to the Garda Station himself and the relevant members engaged with a doctor who signed the necessary forms that led to the hospital admission, suggesting that this was different from the situation provided for under the 2001 Act when members of An Garda Síochána are empowered to effect an initial detention. In those premises, the State Solicitor contended, and the learned Judge agreed, that the applicant himself was able to obtain the forms associated with his admission and that the prosecution did not consider that this was a relevant matter.

48. The applicant also raised an issue relating to the availability and production of garda rosters and custody records. Again, the learned Judge accepted that the prosecution had disclosed the relevant custody records and found that the rosters were not relevant. In any event the court was satisfied that the issues raised by the applicant were matters that could be dealt with in cross examination if the applicant considered that he had identified inconsistencies in the prosecution evidence.

49. The court took a similar view in relation to issues raised by the applicant – on foot of the disclosure he received – relating to chain of evidence and other issues. The learned Judge was very clear in noting that the case had been the subject of numerous adjournment applications made by the applicant and the court was anxious that the trial should be progressed. The court also made clear to the applicant that he had been granted legal aid, and that it was not too late for him to take up the opportunity to have a legal team act for him. The learned Judge directed that if the applicant had any further issues in relation to disclosure, he should put that in writing to the State Solicitor within a period of 7 days.

50. On the 31 July 2025, the court dealt with the motion issued by the applicant seeking to have the proceedings against him stayed permanently. The prosecution submitted that the application was fundamentally flawed. Their position was that the applicant had been furnished with what he had requested and that certain of the requests related to matters that the applicant was not entitled to seek from the prosecution. The learned judge dealt with the application relatively briskly, but from the stated position that she had had numerous interactions with the applicant relating to the proceedings over a period of time, including dealing with the issues that were dealt with on the 10 July 2025. The court stated that she had gone through what had been disclosed by the prosecution and had been satisfied that the prosecution had complied with the disclosure requirements. The court was clear that the issues raised by the applicant were matters that could be addressed at trial. The applicant contended that there were outstanding issues relating to actions taken by the member in charge when he was arrested and in relation to the question of the status of CCTV footage. The court noted that the papers had been read, and the court was satisfied that disclosure was satisfactory.

51. I am satisfied that the response by the learned judge to the issues raised in that application was fair and within the range of reasonable responses open to the court having regard to the evidence and legal arguments. There is no basis for finding that the decision of the learned judge was unreasonable.

52. Likewise, while the reasons given by the court were reasonably terse, they have to be understood in their proper context. As noted by the learned judge, she was familiar with the case, had considered the disclosure and the relevant correspondence and had concluded that the disclosure obligations had been complied with and that the trial should proceed. In those premises I am satisfied that the applicant was provided with adequate reasons for the decision.

ISSUES SPECIFICALLY RAISED BY THE APPLICANT

53. A curious and unsatisfactory aspect of the manner in which the case was presented by the applicant was that while on paper he managed to produce very extensive submissions running to over 34,000 words, he appeared to have difficulty responding precisely to certain of the matters raised in those submissions when questioned by the court. It may be that this was a result of his being provided with assistance to present the written submissions. In any event while it is entirely a matter for the applicant to choose whether or not he is represented in these proceedings and in the criminal proceedings, it is somewhat unsatisfactory from the court's point of view if an applicant is not in a position to address in a comprehensive and thorough way matters which he has reduced to writing in respect of the application.

54. The court considers that the advice of the learned Circuit judge relating to the ongoing availability of legally aided representation to the applicant was apposite and something that the applicant ought to consider very seriously.

55. In an affidavit sworn on the 19 January 2026, the State solicitor concerned with the prosecution in this case swore an affidavit in which he averred that his office has used its best endeavours to comply with the prosecutor's disclosure obligations and to furnish disclosure and/or further evidence on multiple occasions. As occurs in criminal prosecutions, where different matters arise coming to hand, advices are received and/or existing materials are reviewed by his office and counsel, further materials and statements can be disclosed. He states that, as of the date of swearing, he was satisfied that disclosure was now complete subject to the possibility of some new evidence coming to hand. I should note that there were certain elements within that affidavit to which the applicant objected, but the court was satisfied that the prosecution no longer was relying on the contentious issues (paras. 7 and 9) and the court has not taken those matters into account. The State solicitor exhibited correspondence between the applicant and the respondent from July 2025 setting out the issues and responses in relation to disclosure matters.

56. At a general level, it appeared to the court that the concerns raised by the applicant all were matters that could and should be dealt with in the context of the trial. The applicant was adamant that the investigative process was flawed and that there were consequent gaps in matters that would have to be proved by the prosecution. It seems to me that these quintessentially are matters that can be raised at the trial, whether by way of cross examination or on foot of an appropriate application to the trial judge; see for instance in that regard the discussion by O'Malley J. in *D.P.P. v C.C.*, quoted earlier.

57. Similarly, the applicant's arguments that the disclosure has been inadequate are matters that can be dealt with at trial. I am not satisfied that the applicant has established a cogent case that there is a risk of an unfair trial on these grounds. A misapprehension that the applicant appeared to operating under was that there was an obligation on the prosecution to rule out every possibility of innocence.

58. In relation to the question of prosecutorial delay, clearly this is a case that could have been brought to trial sooner. However, at least part of the delay appears to be attributable to the actions of the applicant in discharging two sets of legal representatives and issuing multiple disclosure requests. More pertinently, the applicant has not satisfied the court that the time taken to bring this matter to trial, while relatively lengthy, has led to an identifiable substantive prejudice of the type that could justify prohibiting the trial.

59. In terms of specific issues, the applicant is concerned that as of the date of the commencement of the proceedings, the prosecution had failed to produce a signed and sworn copy of the information grounding the search warrant which was executed on the 16 November 2017. He asserts that different versions – signed and unsigned – have been provided to him and there is a question mark around the validity of the sworn information and the lawfulness of the search. The applicant expresses a concern that if he is unable to inspect and challenge the adequacy of the sworn information that means that he is being deprived of a right to a fair trial *inter alia* and is precluded from engaging in meaningful scrutiny of the legality of the searches.

60. This is an issue that can and should be dealt with at trial given the clear benefit that a trial judge will have to appraise the arguments in a proper context. It is open to applicant to challenge the validity of the search warrant and the evidence stemming from the search in that context. I am not satisfied that the issues relating to search warrant and its product give rise to the real risk of an unfair trial.

61. In relation to CCTV footage, the applicant states that the nondisclosure and inconsistent accounts concerning CCTV footage from Permanent TSB branches is a matter that renders his application exceptional. He states that since 2021, he had sought disclosure of CCTV footage from identified Permanent TSB branches. It is apparent from matters subsequently disclosed that the CCTV footage in question which dates from 2017 had expired or been deleted after a period of 28 days and therefore is no longer available. Notwithstanding that information, the applicant states that the inconsistent and apparently contradictory approach adopted by An Garda Síochána to requests for the CCTV footage goes to his right to a fair trial. I disagree. These are matters that can be addressed at trial. It will be a matter for the trial judge to decide in the first instance if the unavailability of CCTV footage, taken in the context of the overall evidence, is a reason to make a ruling in relation to the fairness of the overall trial process.

62. The applicant also argued that one of the core exhibits for the trial will be an Irish driving licence in a name other than his, and that there is an issue in relation to the chain of custody in respect of that exhibit. This clearly is a matter for the trial and can be addressed by cross examination or an appropriate application.

63. The applicant complains that he has not been provided with statements, notebook entries or operational records in relation to certain members of An Garda Síochána who participated in the search of his home in November 2017. He raises the issue that if one of the identified Gardaí participated in the search and also later acted as a member in charge during his detention this "*may amount to a breach of the custody regulations*". The applicant complains that certain renaming or renumbering of Garda exhibits likewise amounts to a failure on the part of the State to comply with its continuing obligation to preserve and account for all evidence relevant to the charges and to disclose records detailing how each exhibit was handled stored and transferred. Similarly, he states that the prosecution has not disclosed core electronic evidence relevant to the allegations of fraud and forgery. Again, I am of the firm view that these are matters that can be dealt with at trial and that can be dealt with by the trial judge. The applicant enjoys the presumption of innocence, the prosecution must prove its case, and if there are gaps in the evidence this is a matter that can be addressed in that forum.

64. In relation to the production of the applicant's mental health detention records, the applicant refers to the fact that in October 2016 he was the subject of a detention pursuant to the provisions of the Mental Health Act 2001. He states that these records are necessary in connection with the preparation of a psychological report for his defence and would help assess his mental state at the time of later Garda interviews. In essence, the applicant appears to be contending that when he was later interviewed in the context of the criminal investigation, Gardaí knew or should have known about his psychological vulnerabilities. I consider again that this does not give rise at this point to the level of concern that could lead to the exceptional finding that a fair trial cannot proceed. The applicant has other clear routes to obtain his medical records, and will be in a position to address this issue at trial. In addition, if the applicant has a concern about the admissibility of any statement that he made to An Garda Síochána, he is entitled to challenge that evidence in the ordinary way.

65. The applicant goes on to complain about what he states are failures to disclose matters, however these are matters that An Garda Síochána have stated that they do not have. I do not consider that the applicant has made out a case that there is a real risk that his trial will be unfair on these grounds. Clearly, any issue relating to disclosure can be addressed at trial.

CONCLUSION

66. In all the premises I am satisfied that the applicant's application for relief should be refused and that the trial should be permitted to proceed in the ordinary way. As this judgment is being delivered electronically, I will list the matter before me at 10.30am on Thursday, the 2 July 2026 when the parties can make arguments in relation to final orders.