

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

**[2026] IEHC 389
Record No. 2026/18JR**

BETWEEN/

JOSEPH DAVIS

APPLICANT

-AND-

**THE DIRECTOR OF PUBLIC PROSECUTIONS, THE ATTORNEY
GENERAL, THE COMMISSIONER OF AN GARDA SÍOCHÁNA**

RESPONDENTS

**AN ARD-CHÚIRT
THE HIGH COURT**

Record No. 2025/1470JR

BETWEEN/

RICHARD TUITE

APPLICANT

-AND-

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 17th day of June 2026

INTRODUCTION

Preliminary

1. In their respective applications for leave to apply for judicial review, Mr. Davis and Mr. Tuite, who are litigants in person, seek a number of reliefs in the context of their respective summary prosecutions before the District Court.
2. Their principal argument is that it is contrary to, *inter alia*, Article 30.3 of the Constitution for the Attorney General, the Director of Public Prosecutions (“the DPP”) and members of the Gardaí to prosecute offences summarily ‘*in the name of the People*’.
3. In Mr. Davis’ case, he is charged with six alleged summary offences, mainly under the Road Traffic Legislation, as well as an alleged statutory breach of the peace under the Criminal Justice (Public Order) Act 1994 (as amended). The alleged offences are brought in the name of the DPP.
4. In Mr. Tuite’s case, he is charged with an alleged single offence contrary to s. 4 of the Road Traffic Act 2010, which is also brought in the name of the DPP.
5. The separate summary prosecutions in respect of Mr. Davis and Mr. Tuite remain pending before the District Court.
6. In summary, Mr. Davis, in two sets of submissions dated 16th January and 10th February 2026, argues that the bringing of these summary proceedings in his case ‘*in the name of the People*’ is contrary to the Constitution. His argument focuses on Article 30.3 of

the Constitution which sets out that all crimes and offences prosecuted in any court “other than a court of summary jurisdiction shall be prosecuted in the name of the People”. Mr. Davis refers to *People (DPP) v Roddy* [1977] I.R. 177 (“Roddy”) and *Lynch v The DPP & Ors (No. 1)* [2025] IEHC 159, and in his second set of submissions (which were made in response to the respondent’s submissions) he refers to *The DPP (at the suit of Garda Liam Varley) v Ciaran Davitt & The Attorney General* [2023] IESC 17. He essentially sets out that despite clarification in the relevant law in those judgments, his Article 30.3 argument remains live and a genuine and distinct issue to be determined.

7. Similar arguments are made in Mr. Tuite’s case.
8. The DPP opposes the grant of leave in respect of each of the Applicants’ applications.
9. Niall Nolan BL appeared for the Respondents in both cases.

APPLICABLE THRESHOLD

10. The applicable threshold of ‘arguability’ for leave to seek judicial review in an ordinary non-statutory context under O. 84 of the Rules of the Superior Courts 1986 (as amended) (“the RSC 1986”) referred to in *G v Director of Public Prosecutions* [1994] 1 I.R. 374 was re-stated by the Supreme Court in *O’Doherty v The Minister for Health* [2022] IESC 32; [2023] I.R. 488 (“*O’Doherty*”) per O’Donnell C.J. at para. 39 as follows:

“The threshold is a familiar one in the law. It is, in essence, the same test which arises when proceedings are sought to be struck out on the grounds that they

are bound to fail, or the test that is normally required in order to seek an interlocutory injunction. It must be a case that has a prospect of success (otherwise it would not be an arguable case) but does not require more than that. While, inevitably, individual judges may differ on the application of the test in individual cases at the margins, the test itself is clear. This test – it must be stressed – is solely one of arguability: it is emphatically not a test framed by reference to whether a case enjoys a reasonable prospect of success, still less a likelihood of success. Any such language obscures the nature of the test and may on occasion lead to misunderstanding, appeal and consequent delay.” (See also the similar observations of the Supreme Court in *Esmé v Minister for Justice and Law Reform* [2015] IESC 26, *Burke v Minister for Education* [2022] IESC 1; [2023] 2 I.R. 1 and the Court of Appeal in *Sutton v The DPP & Ors* [2024] IECA 303).

11. The same threshold applies irrespective of whether the application for leave is made *ex parte* or is made on notice to the respondent. This leave application was made on notice.
12. I consider, for the following reasons, that the central contention posited by Mr. Davis and Mr. Tuite in their respective applications for leave to apply for judicial review, does not meet the arguability threshold and does not have a prospect of success.

SUMMARY PROSECUTION

13. In this regard, in relation to prosecutions on *indictment*, Article 30.3 of the Constitution stipulates that they must be “*prosecuted in the name of the People and at the suit of the*

Attorney General or some other person authorised in accordance with law to act for that purpose". Since the Prosecution of Offences Act 1974 ("the 1974 Act"), this includes the DPP. The alleged offences in the cases of Mr. Davis and Mr. Tuite are summary in nature and not indictable.

14. The question of a member of the Garda Síochána proceeding under the name of the DPP to bring a public prosecution without obtaining the prior authorisation of the DPP was considered by the Supreme Court in *Roddy*.
15. In *Roddy*, three charges triable summarily were brought against the defendant, Mr. Roddy, by a member of the Garda Síochána. One was brought on foot of a charge sheet where the complainant was stated to be "*the People at the prosecution of the Director of Public Prosecutions*". The other two were brought on foot of summonses where the complainant was stated to be "*the People at the suit of the DPP*". The member in question had not sought the permission of the DPP to proceed with the prosecution in respect of any of the three offences.
16. The Supreme Court, by a majority of two to one (Griffin and Parke JJ. in the majority; O'Higgins C.J. dissenting) overruled the decision of the High Court (McMahon J.) who had determined that since the permission of the DPP had not been obtained the charges were invalid.
17. The decision in *Roddy* was recently analysed by Professor Dermot Walsh in *Walsh on Criminal Procedure* (Third Edition, Vol. 1, 2025, Thomson Reuters (Professional) Ireland Limited), at paras 3-115 to 3-118 (pp. 153-153).

18. In his judgment in *Roddy*, Griffin J. pointed out that prior to the 1924 Act (save for those that were authorised by law) prosecutions were brought in the name of the King where his prior consent was not required, unless they were brought by persons duly authorised by law.
19. Consequent upon the Criminal Justice (Administration) Act 1924 (“the 1924 Act”), the King was substituted by the AG in prosecutions brought in courts of summary jurisdiction. For the purposes of bringing a prosecution in the name of the King, it was not necessary to obtain the prior consent or permission of the King. Further, the common law had always recognised the right of a common informer to prosecute in courts of summary jurisdiction with the right of a common informer to prosecute charges on indictment being abolished by s. 9(1) of the 1924 Act.
20. In his judgment in *Roddy*, in referring to s. 9(2) of the 1924 Act, Griffin J. quoted the following observations of Sullivan P. in *A.G. v Healy* [1928] I.R. 460 at p. 478 (“*Healy*”), “*I do not think we should construe the words ‘is prosecuted’ in that subsection as equivalent to ‘may be prosecuted’, and I am therefore of opinion that the subsection authorises the Attorney General to prosecute in any Court of summary jurisdiction in all cases in which a prosecution is not instituted by a Minister, Department of State, or authorised person.*” Later, Griffin J. also observed that in his view as s. 9(2) of the 1924 Act “*had the effect of substituting the Attorney General for the King in the case of proceedings for summary offences, such proceedings could have been and were instituted in the name of the Attorney General without his prior consent*” and “[a]s proceedings could have been brought by a member of the Garda Síochána in

the name of the Attorney General under that subsection without the prior consent of the Attorney General, in my opinion proceedings can, since the 1974 Act came into force, likewise be brought in the name of the Director of Public Prosecutions”.

21. In *Healy*, the Attorney General (“the AG”) had initiated a summary prosecution in circumstances where legislation expressly authorised a Customs and Excise official to bring a prosecution. Sullivan P. refused a challenge to the authority of the AG to bring a prosecution, holding that he could prosecute in all cases where a prosecution had not been instituted by the appropriate authorised person.
22. On the facts of the applications involving Mr. Davis and Mr. Tuite, involving as they do alleged charges brought in the name of the DPP by gardaí, the question as to whether the DPP is the prosecutor of last resort in cases where prosecutions can be brought by other authorised persons does not arise in these applications for judicial review.
23. Further in his analysis of the decision of Griffin J. in *Roddy*, Professor Walsh points out that between 1924 and 1974, many summary cases had gone from the District Court to the Supreme Court on points of law and Griffin J. could find no reported case in which a challenge had been taken to the practice of prosecuting summary offences in the name of the Attorney General in cases where his prior consent had not been sought and given. Professor Walsh observes that Griffin J. concluded that the practice must be accepted as having been perfectly proper up to 1974 and consequent upon the 1974 Act, the AG was substituted by the DPP in criminal matters. Griffin J. held that in the absence of clear words to the contrary, members of the gardaí could also bring summary

prosecutions in the name of the DPP without having to secure his or her prior permission in each individual case:

“The only qualification is that summary prosecutions should not be brought using the Art.30.3 formula, “The People at the suit of the [DPP]”, as that applied only to prosecutions on indictment. In Griffin J.’s view, the correct title for summary prosecutions is “the Director of Public Prosecutions’ simpliciter”.”

(See Professor Dermot Walsh, *Walsh on Criminal Procedure*, (Third Edition, Vol. 1, 2025, Thomson Reuters (Professional) Ireland Limited), at para. 3-116 (p. 153)

24. Generally, as referred to in *Lynch v The DPP & Ors (No. 1)* [2025] IEHC 159 (at paras 26-35 – *Lynch v DPP (No. 2)* [2025] IEHC 759 addressed the question of mootness – prior to the coming into operation of the 1937 Constitution, the Ministers and Secretaries Acts 1924 had vested in the office of the Attorney General “*all powers, authorities, duties and functions formerly vested in or exercised by the Attorney-General for Ireland, the Solicitor-General for Ireland, the Attorney-General for Southern Ireland, the Solicitor-General for Southern Ireland, the Law Adviser to the Lord Lieutenant of Ireland and any or all of them respectively.*”
25. Professor Walsh makes the point that “[c]learly, this assumes the existence of the office in Ireland pre- 1922, an office which Casey explains is rooted in the common law” (Walsh, *Walsh on Criminal Procedure* (Third Edition, 2025, Thomson Reuters (Professional) Ireland Limited, at para. 3-15, p. 115. The reference to ‘Casey’ is to J. Casey, *The Office of the Attorney General in Ireland* (Dublin: Institute of Public Administration, 1980) Chapters 1 and 2)).

26. Article 30.1 of the Constitution provides that “[t]here shall be an Attorney General who shall be the adviser of the Government in matters of law and legal opinion, and shall exercise and perform all such powers, functions and duties as are conferred or imposed on him by this Constitution or by law.” Article 30.3 provides that “[a]ll crimes and offences prosecuted in any court constituted under Article 34 of this Constitution other than a court of summary jurisdiction shall be prosecuted ‘in the name of the People’ and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose.”

27. As referred to in *Lynch (No. 1)*, this constitutional statement of the prosecutorial powers, functions and duties of the Attorney General can be supplemented by both the common law and statute law.

28. Section 9(1) of the 1924 Act provides that “[a]ll criminal charges prosecuted upon indictment in any court shall be prosecuted at the suit of the Attorney-General of Saorstát Eireann” and s. 9(2) provides that “[s]ave where a criminal prosecution in a court of summary jurisdiction is prosecuted by a Minister, Department of State, or person (official or unofficial) authorised in that behalf by the law for the time being in force, all prosecutions in any court of summary jurisdiction shall be prosecuted at the suit of the Attorney-General of Saorstát Eireann.”

29. Professor Walsh makes the observation that s. 9 of the 1924 Act “confirms what had already been the position at common law, namely that the Attorney General is competent to prosecute all offences on indictment and is a competent prosecutor of

summary offences.” (Walsh, *Walsh on Criminal Procedure* (Third Edition, 2025, Thomson Reuters (Professional) Ireland Limited) at para. 3-17, p. 115).

30. The 1974 Act created the office of the Director of Public Prosecutions to undertake most of the Attorney’s prosecutorial functions and authorised the DPP, in accordance with law, to act for the purpose of prosecuting in the name of the People as provided for in Article 30.3 of the Constitution. Section 3(1) of the 1974 Act provides that “[s]ubject to the provisions of this Act, the Director shall perform all the functions capable of being performed in relation to criminal matters and in relation to election petitions and referendum petitions by the Attorney General immediately before the commencement of this section and references to the Attorney General in any statute or statutory instrument in force immediately before such commencement shall be construed accordingly.”

31. The prosecution of offences by members of An Garda Síochána is *inter alia* addressed in s. 8 of the Garda Síochána Act 2005, as amended and substituted by the Garda Síochána (Amendment) Act 2022, and insofar as the matters raised in this application, are concerned, the following provisions are relevant:

“(1) No member of the Garda Síochána in the course of his or her official duties may institute a prosecution except as provided under this section.

(2) Subject to subsection (3), any member of the Garda Síochána may institute or conduct prosecutions in a court of summary jurisdiction, but only in the name of the Director of Public Prosecutions.

(2A) Where a prosecution is instituted by a member of the Garda Síochána pursuant to subsection (2), the prosecution may be conducted by that member or any other such member.

(3) In deciding whether to institute and in instituting or conducting a prosecution, a member of the Garda Síochána shall comply with any applicable direction (whether of a general or specific nature) given by the Director of Public Prosecutions under subsection (4).

(4) The Director of Public Prosecutions may give, vary or rescind directions concerning the institution and conduct of prosecutions by members of the Garda Síochána.

(5) Directions under subsection (4) may be of a general or specific nature and may, among other things, prohibit members of the Garda Síochána from—(a) instituting or conducting prosecutions of specified types of offences or in specified circumstances, or (b) conducting prosecutions beyond a specified stage of the proceedings.

(6) If a prosecution is instituted or conducted by a member of the Garda Síochána in the name of the Director of Public Prosecutions—(a) the member is presumed, unless the contrary is proved, to have complied with this section and any applicable direction given by the Director under this section, and (b) nothing done by the member in instituting or conducting the prosecution is invalid by reason only of the member's failure to comply with this section or that direction.

(7) Nothing in this section—(a) precludes the Director of Public Prosecutions from, at any stage of the proceedings, assuming the conduct of a prosecution instituted by a member of the Garda Síochána, or (b) authorises a member of the Garda

Síochána to institute a proceeding without the consent of the Director of Public Prosecutions if an enactment prohibits the institution of that proceeding except by or with the Director’s consent.

(8) For the purpose of this section—(a) a direction is of a general nature if it relates to a class of prosecutions, and (b) a direction is of a specific nature if it relates to the prosecution of a person for a specific offence.”

32. Section 2(1) of the Garda Síochána (Amendment) Act 2022 provides that section 8 of the Act of 2005 is amended as follows: “(a) in subsection (2), by the substitution of “*institute or conduct*” for “*institute and conduct*””, and (b) by the insertion of the following subsection after subsection (2): “(2A) *Where a prosecution is instituted by a member of the Garda Síochána pursuant to subsection (2), the prosecution may be conducted by that member or any other such member*”.

33. Section 2(2) of the Garda Síochána (Amendment) Act 2022 provides that the amendments to s. 8 of the Act of 2005 effected by s. 2(1) of the 2022 Act “*shall apply in respect of prosecutions instituted pursuant to subsection (2) of that section irrespective of whether such prosecutions were instituted before or after the coming into operation of this section.*”

34. In *The DPP (at the suit of Garda Liam Varley) v Ciaran Davitt & The Attorney General* [2023] IESC 17 (14th July 2023, judgment delivered by Dunne J., with O’Donnell CJ., Charleton, O’Malley and Collins JJ. concurring) the Supreme Court *inter alia* rejected the submission that s. 8(2) of the 2005 Act had the effect of depriving members of the gardaí, other than the prosecuting garda, from conducting a prosecution in the District

Court. After the judgment of the High Court and before the hearing in the Supreme Court in *The DPP (at the suit of Garda Liam Varley) v Ciaran Davitt & The Attorney General*, the amendments to s. 8 of the 2005 Act had been effected by the Garda Síochána (Amendment) Act 2022. The Supreme Court decided that the appeal was not moot and delivered its judgment dealing with a range of matters, including that just referred to.

35. Accordingly, for the reasons set out in this judgment, I do not consider that the contentions of Mr. Davis (oral and written) and those of Mr. Tuite (who relied on his written documents and submissions) *inter alia* that the DPP, as a delegate of the Attorney General, lacks constitutional authority to prosecute or direct prosecutions summarily in the District Court, or that s. 9(2) of the 1924 Act is inconsistent with Article 30.3 of the Constitution and invalid, or that the DPP or members of An Garda Síochána are prohibited by the Constitution or by operation of law from prosecuting summarily in the circumstances of their respective cases, are arguable or meet the threshold in *G v Director of Public Prosecutions* [1994] 1 I.R. 374.

CONCLUSION AND PROPOSED ORDER

36. In the circumstances, I shall refuse the respective applications of Mr. Davis and Mr. Tuite seeking leave to apply for judicial review for the reliefs claimed in their Statement of Grounds.

37. I shall put the matter in for mention before me at 10.30am on Wednesday 24th June 2026 to address the question of costs.

CONLETH BRADLEY

16th June 2026