



[2026] IEHC 633

THE HIGH COURT

JUDICIAL REVIEW

[2024 788 JR]

BETWEEN

PHILIP MORRISSEY JUNIOR

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS,

THE COMMISSIONER OF AN GARDA SÍOCHÁNA, IRELAND AND THE

ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 18th day of September, 2026

INTRODUCTION

1. In these proceedings the applicant seeks an order of *certiorari* quashing his conviction for assault contrary to s. 2 of the Non-Fatal Offences Against the Person Act, 1997. The applicant was convicted, *inter alia*, of assault in the District Court. The conviction for assault

was upheld in Carlow Circuit Court on the 14 March 2024. It is the trial in the Circuit Court which is impugned in these proceedings.

2. The grounds upon which the applicant impugns the soundness of his conviction can be grouped into the following four headings:

- i. Fair procedures
- ii. Failure to obtain evidence
- iii. Errors of law
- iv. Failure to investigate

3. For the reasons explained in this judgment, I consider that the application of judicial review should be refused.

BACKGROUND

4. The events resulting in the applicant's conviction for assault occurred on the 19 April 2018. However, the applicant considered that the broader circumstances underpinning these proceedings have their origin in events in January 2018. Much of the information provided by the applicant is somewhat tangential to the core issue of whether the applicant has received a fair trial. However, insofar as the applicant contended that certain events are material to the question of how particular applications were handled by the Circuit Court Judge, it may be helpful to provide a broad overview of the chronology leading to these proceedings.

5. The applicant stated that he was employed in the family business, Dan Morrissey (Irl) Limited. The business was run by his grandfather and operated in sand, gravel and quarries.

The applicant explained that, as part of the employment arrangements, there was a verbal agreement to the effect that after several years of foregoing wages, he would be entitled to ownership of particular land for his own enjoyment. This land consisted of Ballyburn House, where he resided with his wife and children, a second adjoining house, and 10 acres of land. The applicant notes that Ballyburn House was subject to a mortgage which the applicant avers was being paid off and up to date.

6. In 2014, a receiver was appointed over the family business and the receiver sought to sell the various plots of land owned by the family business. The applicant was served with an eviction notice, which he challenged unsuccessfully. The question of whether the applicant was lawfully evicted or any other issue relating to the actions of the receiver are not live issues in these proceedings. The issues are being described due to the applicant's concern that they contextualise what occurred thereafter.

7. It should also be noted that other individuals involved in the events which occurred in January and April 2018 disputed the applicant's accounts. I do not intend to outline each version of events for the purpose of this judgment. In particular, the incident which occurred in January and subsequent convictions are not impugned before this court. Disagreements as to what unfolded in April 2018 are only relevant insofar as they go to the legal issues raised by the applicant.

January 2018 incident

8. On the 18 January 2018, an incident unfolded between the applicant and several other individuals involved with Sugar Beet Ireland. That company had purchased lands from the receiver. The applicant explains that his dogs were barking at 9.30am and this prompted him

to inspect the area. It transpired that a machine driver, who was known to the applicant, was entering the property through a gate leading onto the land in question. The applicant requested the driver to leave, and this request was acceded to.

9. Approximately 10 minutes later, three named men arrived in the company of two of the applicant's relatives. The applicant explained that the men surrounded him and he felt threatened. In response he initiated a "protest" outside his land, such that he walked the perimeter with his dog. Shortly thereafter two trucks arrived at the property. The applicant provided the names of the drivers and the registration plates of each vehicle. The applicant explained that he attempted to stop the trucks from reversing into his property by standing behind them. As the applicant stood behind one truck, the other truck would begin reversing, and the applicant attempted to run between the trucks to stall their progress.

10. At one point, when attempting to stop the trucks from progressing, the applicant remained behind a reversing truck in such a manner that the driver could not see him, but the family member guiding the driver into the property was in a position to see the applicant. When the truck reached the point where the applicant was standing, the applicant explained that he "*ended up under the back axle of the [truck]*". The applicant was unharmed and managed to crawl out from under the truck after a short time. The other individuals involved rejected this characterisation of events, however as this incident does not impact the issues presenting in this case it is not necessary to seek to resolve this dispute. The incident concluded when Garda Amanda Kirwan arrived at the scene and instructed the individuals to leave until ownership of the land was established.

11. As a result of the incident described, the applicant was charged and convicted with three public order offences. Other charges were brought against the applicant; however, he was successful in his defence of these charges. The appeal against the public order offences remains extant and no issue in relation to them arises before this Court.

April 2018 Incident

12. The applicant remained in possession of the property at Ballyburn House in the period following the January incident. It is accepted by the applicant in his statement to Gardaí following the January incident, and which was exhibited to his affidavit, that he was unsuccessful in challenging the eviction order.

13. In the late evening / night of the 19 April 2018, the applicant stated that he noticed a vehicle in the disused quarry pit on the Ballyburn site. The applicant went to investigate with his dogs. From witness evidence, the applicant also appeared to possess a powerful lamp which had the effect of disorienting those at which it was shone.

14. The individual in the vehicle on the site of Ballyburn House was a security contractor by the name of David Doyle. Mr. Doyle explained that he was using the headlights of the car to illuminate the machinery on the site. The applicant approached Mr. Doyle, who was in the vehicle, and, according to the applicant, he agreed to accompany Mr. Doyle to the gate of the property upon Mr. Doyle's failure to identify himself. Mr. Doyle in his evidence explained that the applicant approached him aggressively and disoriented him in the car using the lamp, threatening to shoot and "*blow [Mr. Doyle's]...head off*". The applicant's dogs also appeared to Mr. Doyle to be behaving in an agitated manner. These events gave rise to the conviction for assault.

15. From the point of view of the applicant, an issue arose about how Mr. Doyle arrived on site. According to Mr. Doyle, his wife dropped him to the site in the vehicle present at the incident, as Mr. Doyle was banned from driving and thus could not drive in a public place. The applicant disputed that version of events and argued that, from previous statements, Mr. Doyle drove himself to the site, which would have involved an act of unlawful driving.

16. Gardaí arrived on site and the applicant was brought to Athy Garda Station where he was arrested and charged with, *inter alia*, assault. The applicant was subsequently convicted in the District Court and appealed to the Carlow Circuit Court. The Circuit Court upheld the applicant's conviction on the 14 March 2024.

ISSUES ARISING

17. The applicant seeks by way of judicial review, an order of *certiorari* quashing his conviction for assault contrary to s. 2 of the Non-Fatal Offences against the Persons Act 1997; as well as declaratory relief that he did not receive a fair trial in accordance with Art 38.1 of the Constitution and / or Art. 6 ECHR. As a preliminary issue, the applicant seeks an extension of time for the bringing of judicial review.

18. The applicant suggests that the issues arising for consideration can be grouped in the following manner:

- i. Fair procedures;
- ii. Failure to obtain evidence;
- iii. Errors in law; and
- iv. Failure(s) to investigate.

19. For ease of reference, I will first set out the circumstances in which the applicant contends each issue arises. After which, I will address the arguments raised in relation to each issue in turn.

Fair Procedures

20. The circumstances giving rise to the “fair procedures” issue are quite net. The applicant sought to agree an adjournment with the prosecution of his appeal in the Circuit Court on two occasions when he was acting as a litigant in person, due to difficulties in taking up his file from his previous solicitor. The respondent suggested that he instead renew his application for an adjournment at the beginning of the Circuit Court session.

21. The applicant explained that his previous solicitor took issue with the manner in which the applicant sought to discharge his fee and refused to release his file until the payment was received in an acceptable manner. The applicant argues that there was an obligation on the court and the prosecution to enquire as to why his file was not released in such circumstances.

22. An adjournment was sought on the 5 March 2024, though this appears to have been held over to the trial on the 14 March 2024. The trial commenced in any event, and the applicant by that stage was represented by solicitor and counsel. In the early stage of the trial, it became apparent that there was confusion as to the number of “dog related offences” before the court. The applicant considered that he was facing two charges, while the respondent considered there ought to be three. The prosecution withdrew the third offence for the convenience of the court. Following that confusion, the applicant sought an adjournment at this point. The trial judge refused the application stating: “*No, no. We’ve started now. We’re an hour into it. I’m not going to grant an adjournment now*”.

23. The applicant further explained that an adjournment was not sought until “*an hour into (the Trial)*” due to the investigating garda giving evidence in relation to three public order offences which were not ultimately determined.

24. In relation to the application for an adjournment on the 5 March 2024, the respondent emphasised that disclosure was served on the applicant on the 11 September 2023 and again by registered post on the 11 January 2024. The respondent submitted that the applicant did not identify what material was absent from the disclosure which required to be obtained from his former solicitor’s file, or how any such absence hindered his defence.

25. Concerning the 14 March 2024 application, the respondent outlined that the appeal had been outstanding for four years and that the issue of representation was a matter for the applicant. The issue of an adjournment was therefore quintessentially a matter for the Circuit Court. Furthermore, the counsel for the applicant indicated that he was satisfied to proceed at the beginning of the hearing on the 14 March 2024, effectively concluding the issue of an adjournment held over from the 5 March 2024. Insofar as the applicant argues that the evidence relating to the public order offences was prejudicial, the respondent argued that such an argument ought to be made at the trial and that an attempt to challenge the evidence by way of judicial review amounts to an *ex post facto* legal challenge.

Failure to obtain evidence

26. The applicant contends that the prosecution ought to have obtained statements from Mr. Doyle’s wife and father-in-law and that they ought to have been in a position to give evidence before the court. This was due to the fact that the applicant sought to undermine the credibility of Mr. Doyle on the basis that he was disqualified from driving. The applicant contended that

if Mr. Doyle's statement about how he arrived at the site was impugned successfully this in turn would have fortified his contention that Mr. Doyle's credibility was in issue. The applicant sought for the State solicitor to obtain witness statements from these individuals and that this was not done.

27. The argument was advanced that the failure to obtain these statements undermined the ability of the applicant to:

- “Objectively test” the credibility of Mr. Doyle's assertions about his movements.
- Assert that Mr. Doyle was not at the site for work but instead to provoke the applicant.
- Establish that Mr. Doyle was not a man in fear of the applicant but rather in fear of being apprehended by gardaí for driving whilst disqualified.
- Argue that there was a failure to investigate the question of Mr. Doyle's breach of his driving ban; which as a result could not be verified or contradicted by objective evidence.

28. The applicant also noted that he sought but was not provided with witness statements from Garda Whelan and Garda Gaffney (who were present on the night of the 19 April 2018) in order to challenge the lawfulness of his arrest.

29. The respondent rejected the argument that these witnesses were central to the issues before the court, instead characterising the manner in which Mr. Doyle arrived at the site as a “collateral issue”. The respondent outlines that the applicant had the ability to instruct his solicitor to take witness statements from them, serve witness summonses to secure their

attendance, and if attendance had been secured, sought to have the Circuit Judge call the witnesses for cross-examination by both sides.

30. In relation to the Garda statements, the respondent argued that the applicant's arrest is of no relevance to the appeal. The applicant was arrested and released subsequent to his identity and address having been verified. Hence, even if some illegality was identified, no causal link existed between the alleged illegality and the appeal before the court, and any such illegality could not have impacted the jurisdiction of the court.

Errors in law

31. The applicant argues that the Circuit Judge erred in law when commenting that the defence could have issued subpoenas for the witnesses sought by the defence and that the State could not be criticised for not having these individuals present in court. The argument advanced therefore was that the Circuit Judge fell into error when making this contention. This was on the basis that the applicant had sought to have the prosecution interview these witnesses and for statements to be taken from them regarding Mr. Doyle's accounts of his movements on the night in question (which the applicant argued were inconsistent). The applicant argued that he could not be expected to call witnesses without some prior knowledge of what they were expected to say. Further, the applicant stated that he could not apply to treat the witnesses as hostile in circumstances where there were no prior potentially inconsistent statements.

32. According to the applicant, the Circuit Court Judge therefore erred in prematurely shifting the focus to the question of who ought to have procured the witnesses. Rather, the focus ought to have remained on the failure to obtain statements in the first instance. The

applicant was concerned that in approaching the individuals with the hope of obtaining a statement, he could expose himself to charges of intimidating witnesses.

33. The applicant further argued that the Circuit Judge erred in his ruling on the question of Mr. Doyle driving in a public place. In addition, he argued that Mr. Doyle should have been arrested for driving in a public place whilst disqualified. At the very least, he argued, the fact that Mr. Doyle was driving whilst disqualified ought to have been considered by the gardaí at the site, when arresting the applicant on foot of Mr. Doyle's complaint.

34. The applicant outlined that a garda must distinguish between the circumstances in which an "accuser" at the scene of an incident seeks for an individual to be taken into custody, and the circumstances in which a person at the scene of an incident only seeks to provide information to the gardaí for the purposes of their investigation. A member of An Garda Síochána should therefore regulate their conduct according to the condition and repute of the person making the complaint / providing information as well as that of the person charged. This proposition advanced by the applicant concluded with the argument that Garda O'Mahony failed to have regard to the reputation and condition of Mr. Doyle. The condition of Mr. Doyle, according to the applicant, was that of a man who was discovered behind the wheel of a vehicle in a public place in contravention of a driving disqualification.

35. The Circuit Court's ruling was that Mr. Doyle did not *intend* to breach the disqualification nor was there evidence of an actual breach of the disqualification and therefore found on the balance that no disqualification occurred in this instance. The Circuit Judge was also satisfied that the Ballyburn site was not a public place. The applicant argued that driving

whilst disqualified is a strict liability offence and that the correct burden of proof was beyond a reasonable doubt and not on balance.

36. In relation to the issue of the Circuit Judge's ruling on whether the Ballyburn site was a public place, the respondent submitted that this was a mixed question of law and fact. The respondent argued that the Circuit Judge directed himself to the correct legal test, and even if the Judge reached the incorrect finding, this does not amount to an error of law as it was a finding made within the Judge's jurisdiction.

37. Concerning the burden of proof issue raised, the respondent contended that the applicant's argument is misconceived. This was on the basis that the Circuit Judge is required to determine the accused's guilt beyond a reasonable doubt. The Circuit Judge was not tasked to determine whether Mr. Doyle committed an offence, and was therefore entitled, as a collateral issue, to consider on the balance of probabilities whether Mr. Doyle was driving whilst disqualified.

Failure to investigate

38. The applicant provided a lengthy chronology of events which pre-dated the incident on the 19 April 2018. The chronology begins with the purchase of the Ballyburn site by Sugar Beet Ireland from Dan Morrissey (IRL) Limited (In Receivership) and its subsequent sale to Wintermill Limited, a company owned and operated by the applicant's uncle and cousin. The applicant also described in detail the events of the 18 January and the 19 April 2018 which have already been outlined in this judgment.

39. Drawing from his chronology, the applicant argued that there was a failure to investigate his complaints of trespass and forcible entry onto the property of the Ballyburn site, as well as the particular failure to investigate the cutting of the locks on the property. There was a further argued failure to investigate the striking of the applicant by the trucks brought on site on the 18 January 2018. The applicant also emphasised that there was a failure to investigate the driving ban of Mr. Doyle and the failure to seek out evidence to test the credibility of Mr. Doyle's evidence.

40. The respondent considered that the complaints relating to a failure to investigate are not matters appropriate for this judicial review application. In particular, complaints as to how matters occurring on the 18 January 2024 were investigated were not relevant to the fairness of the applicant's trial for assault. Further, the Circuit Judge considered that the issue of whether Mr. Doyle was driving whilst disqualified was not relevant to the question of whether he was assaulted and did not accept the proposition it undermined his credibility for the purpose of his evidence as to the assault.

41. Ultimately, the respondent contended that the applicant had not identified any evidential shortcomings which impacted his ability to advance a point which had material bearing in his defence so as to give rise to a real and unavoidable risk of an unfair trial.

DISCUSSION

42. The principles governing applications of this type are well-established. The court is required to bear in mind that the role of the court in a judicial review application is not to be equated with that of an appeal court and judicial review is not to be utilised as a form of

alternative appeal. In that regard, it is helpful to reiterate the points made by Hyland J. in *Connor v. DPP* [2022] IEHC 176 at para. 16 and 17:

“When considering the evidence, I must also bear in mind that the function of the High Court in judicial review proceedings is not to act as an appellate court. Where there is an error by a District Court Justice, the appropriate way to proceed is by case stated or appeal. The applicable general principle can be found in Halsbury’s laws of England (3rd Ed.), Vol.11 at paragraph 119, as quoted with approval in Lennon v. District Judge Clifford [1992] 1 I.R. 382:

‘Where the proceedings are regular on their face and the inferior tribunal had jurisdiction, the superior court will not grant the order of certiorari on the ground that the inferior tribunal had misconceived a point of law. When the inferior tribunal has jurisdiction to decide a matter, it cannot (merely because it ... misconstrues a statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence, or convicts without evidence) be deemed to exceed or abuse its jurisdiction

Certiorari will not be granted to quash the decision of an inferior tribunal within its jurisdiction on the ground that the decision is wrong in matters of fact, and the Court will not hear evidence impeaching the decision on its facts ... If there is any evidence, the Court will not examine whether the right conclusion has been drawn from it.’”

43. That overarching observation frames the approach of the court and informs how the substantial arguments are addressed. Prior to considering those substantive grounds, it is necessary to address the issue of an extension of time. On one level the delay in this case is

relatively minor, but as will be set out the approach adopted by the applicant amounted to an almost complete failure to engage with the rules regarding the timescale within which judicial review applications should be brought and the necessary steps that must be taken if an extension of time is sought.

Extension of time

44. The Circuit Court order which the applicant impugns was made on the 14 March 2024. The applicant's statement of grounds was filed on the 19 June 2024. Evidently, the applicant was out of time by a period of 5 days. The applicant was clearly cognisant of the issue of time in circumstances where the statement of grounds expressly seeks an extension of time if necessary. However, no explanation of the delay or any argument pertaining to why an extension of time ought to be granted was set out in the pleadings and affidavits or addressed in the written submissions.

45. At the hearing, the applicant submitted that the delay was minimal and it had no substantive effect. When prompted as to what ought to be the good and sufficient reason to grant an extension of time, the applicant argued that a change to the rules of court which altered the old practice of bringing "*stop the clock*" applications amounted to good and sufficient reasons.

46. The respondent argued that the change to the rules of court could not be said to amount to good and sufficient reason, where the applicant would still be in default of the time limit under the previous rules.

47. The starting point in relation to time is O. 84 r. 21(1) RSC, which requires an application for leave to bring judicial review to be made within three months of the impugned decision. Where the decision challenged is that of a court order, O. 84 r. 21(2) RSC states that the date for when grounds to challenge the decision first arose is to be taken as the date of the order. The court's discretion to extend time is set out in O. 84 r. 21(3) RSC.

48. The application of O. 84 r. 21(3) RSC was considered by Simons J. in *DPP v. Tyndall* [2021] IEHC 283. In *Tyndall*, the DPP sought to quash an order of the Circuit Court which it submitted was made in excess of jurisdiction. The judgment of Simons J. was concerned solely with the issue of whether an extension of time ought to be granted.

49. Simons J. noted that the general principles applying to issues of an extension of time were articulated by the Supreme Court in *M. O'S. v. Residential Institution Redress Board* [2018] IESC 61. It would be helpful to set out para. 60 of the Supreme Court judgment:

"I have concluded that the case law cited above, insofar as it applies to the extension of the time specified under Ord.84 for the bringing of judicial review proceedings, makes clear that the jurisdiction which the court is to exercise on an application to extend time is a discretionary jurisdiction which must be exercised in accordance with the relevant principles in the interests of justice. It clearly requires an applicant to satisfy the court of the reasons for which the application was not brought both within the time specified in the rule and also during any subsequent period up to the date upon which the application for leave was brought. It also requires the court to consider whether the reasons proffered by an applicant objectively explain and justify the failure to apply within the time specified and any subsequent period prior to the application and

are sufficient to justify the court exercising its discretion to extend time. The inclusion of sub-rule (4) indicates expressly that the court may have regard to the impact of an extension of time on any respondent or notice party. The case law makes clear that the court must also have regard to all the relevant facts and circumstances, which include the decision sought to be challenged, the nature of the claim made that it is invalid or unlawful and any relevant facts and circumstances pertaining to the parties, and must ultimately determine in accordance with the interests of justice whether or not the extension should be granted. The decision may require the court to balance rights of an applicant with those of a respondent or notice party. The judgments cited do not, in my view, admit of a bright line principle which precludes a court taking into account a relevant change in the jurisprudence of the courts when deciding whether an applicant has established a good and sufficient reason for an extension of time. Further, the judgments cited above do not envisage any absolute rule in relation to what may or may not be taken into account or constitute a good reason or a good and sufficient reason. The court, in an application for an extension of time, is exercising a discretionary jurisdiction and in the words of Denham J. in De Roiste, '[t]here are no absolutes in the exercise of a discretion. An absolute rule is the antithesis of discretion. The exercise of a discretion is the balancing of factors – a judgement.'" [Emphasis added]

50. In *M O'S*, the Supreme Court was satisfied that an extension of time should be granted. Of particular relevance in *M O'S* were that the relevant legislative provisions concerned a particularly vulnerable class of litigant – those who suffered abuse in residential institutions; the strength of the applicant's case was otherwise overwhelming; and there was a significant

change in the interpretation of the law which had the effect of altering the likelihood of success in bringing judicial review proceedings. By contrast, in *Tyndall*, Simons J. refused to grant an extension on the basis that the reasons offered by the DPP (as applicant) were perfunctory; the DPP could not be considered by any means to be a vulnerable class of litigant who would be unfamiliar with procedural requirements; and crucially that the accused who stood to be impacted by the underlying judicial review proceedings had an entitlement to conduct her affairs on the assumption that the criminal proceedings were concluded.

51. From the *dicta* of the Supreme Court in *M O'S*, and in particular those emphasised above, it is clear that an application for an extension of time must be considered in its own context and there is no assistance in attempting to prescribe absolute considerations to be addressed in any given case. However, there is a requirement that the applicant explain on affidavit why the application was not brought within time. The applicant must also satisfy the court that there is good and sufficient reason to exercise its jurisdiction.

52. The *dicta* of Simons J. in *Tyndall* provides a helpful breakdown of the type of factors which may be relevant in a given case, and, from *Tyndall*, it is clear that the court must not look at the reasons in isolation but should consider any justification within the broader context of the case. Simons J. also noted that the strength of the case is rarely a ground itself for justifying an extension and that *M O'S* must be viewed in its context as somewhat exceptional in that regard, owing to the subject matter therein.

53. In light of *M O'S* and *Tyndall*, I am not satisfied to grant an extension of time in this instance. Primarily this is because the applicant did not provide any cogent reason why an extension of time should be granted. I do not consider the change to the rules of court which

altered the date upon which time stopped running, to be of any detriment to the applicant. The applicant under the old system would still be required to bring a “stop the clock” application and would face the same time difficulties as he faces here. Moreover, the new system is more beneficial to an applicant as all that is required is the filing of documents rather than an application to court. Second, the total failure to engage with the requirements to provide good and sufficient reason and to explain why the application could not be brought within time is particularly troubling. Even accepting for argument that the changes to the rules of court had a negative impact on the ability of applicant to bring the leave application, no attempt was made to engage with this reasoning by way of affidavit or legal submissions, until the eleventh hour at hearing. Finally, I do not consider there is any particular feature of this case which nonetheless justifies the exercise of discretion. The applicant was represented by counsel at the Circuit Court hearing and during the course of the judicial review, the date from which time began to run was clearly the 14 March 2024, and there was no complexity or anomaly in this case which would cause delay in initiating proceedings.

54. Having regard to the total failure of the applicant to engage properly with the requirements of O. 84 r. 21, I am therefore refusing the application for an extension of time. However, I am nonetheless satisfied that even if an extension of time were granted, this is not a case in which relief ought to be granted.

Fair Procedures

55. Concerning the applications for an adjournment, the applicant relies upon *O’Callaghan v. District Court Clifford* [1993] 3 I.R. 603. The applicant argued that this is authority for the proposition that a refusal to grant an adjournment application by the defence such that the accused has no time to consult with counsel infringes the applicant’s constitutional rights. Thus,

it followed that the trial has not been conducted in a constitutionally fair manner. Building upon this, the applicant argues that, per Simons J. in *Connors v DPP* [2023] IEHC 8, once it has been established that the accused's trial has not been conducted in a fair manner, the applicant is not required to demonstrate actual prejudice.

56. The respondent contended that the circumstances in *Connors* can be readily distinguished from the present case. In *Connors*, relief was granted on the basis that an adjournment was refused in circumstances where the accused did not previously meet his representatives, had no time for any consultation, and where it was clear that the adjournment would have had no material impact on the effective running of the court's list. This distinguished *Connors* from the instant proceedings: the applicant was represented, had instructed his legal representatives, and the application for an adjournment was made during the course of the hearing rather than at the outset.

57. Similarly, the respondent emphasises the *dicta* of Simons J. in *Connors* where it was noted that the High Court in judicial review proceedings concerning a Circuit Court trial should show deference to the trial judge where an explanation – which need not be elaborate or lengthy – was provided for refusing the adjournment application.

58. The Court of Appeal in *F.M. v DPP* [2022] IECA 79 held that the discretion to adjourn proceedings was in essence a judgment call which “*can only be impugned if it can be shown to have been made in excess of jurisdiction, ...irrational, or motivated by improper or irrelevant considerations*”.

59. In relation to the applicant's argument about the manner in which evidence was admitted which he argues was prejudicial, the respondent notes that no objection was made at the time of the hearing and that this in essence amounts to a challenge *ex post facto*, a practice explicitly deprecated in *People (DPP) v. Cronin (No 2)* [2006] 4 I.R. 329. Thus, while an applicant is not automatically barred from raising an argument in this manner, the failure to challenge the evidence contemporaneously remains a relevant factor for consideration, as per Donnelly J. in *Brassil v. DPP* [2021] IECA 83.

60. I am not satisfied that the applicant is entitled to relief on this ground. In relation to the admission of evidence, I consider that what has been argued by the applicant indeed amounts to an *ex post facto* challenge to evidence that was not challenged at trial and I do not see any basis for interfering with the decision of the trial judge.

61. More substantively, I do not consider this is an appropriate case to interfere with the trial judge's discretion to determine an application for an adjournment. I agree that the circumstances in *Connors* are distinguishable from the present case. In *Connors*, counsel for the accused had no opportunity to consult with the accused prior to the sentencing hearing. Further, the application for an adjournment was made in good time and was not contested by the prosecution.

62. I consider the applicant faces two difficulties in this respect. First, the authorities are clear that the discretion to consider an adjournment application is quite broad. The trial judge made clear that the adjournment application was made at an inappropriate juncture in the proceedings and one in which neither the judge nor the prosecution considered would be of much assistance. Relatedly, at the outset of the hearing, counsel for the applicant explicitly

acknowledged that the matter was ready to proceed (Transcript 14 March 2024: pg 1, line 10-11). It must be observed that the only outcome of the hearing that occurred to the point where the adjournment was sought was that the prosecution agreed not to pursue one of the charges against the applicant. In those premises it is not at all clear what new development would have justified an adjournment at that point in the trial.

63. I fully accept the points made by Simons J. in *Connors* that where there is a breach of fair procedures there is no obligation on an applicant to show how the outcome would have been different had a different procedural decision been made. However, I consider that I can take into account that the reasons why an adjournment was sought lacked cogency. It is true that at stages within the overall process the applicant was without legal representation. There was no real explanation as to how any dispute with his former legal representative and the unavailability of his file impaired his later legal representatives. There was no dispute that the prosecution had furnished the applicant himself with the disclosure materials in September 2023 and January 2024. His legal representatives did not seek an adjournment at the outset of the trial and, in fact, indicated that they were ready to proceed. In the premises it is not at all clear why the applicant says an adjournment was necessary as a matter of fair procedures or how refusing an adjournment could have led to an unfair process.

64. In the circumstances, I do not accept that the trial judge was acting in excess of jurisdiction or otherwise conducted himself in such a degree to fall outside the wide discretion afforded to him, as acknowledged by the Court of Appeal in *F.M. v. DPP*.

65. The next arguments raised by the applicant can be dealt with together as there is some considerable overlap.

Failure to obtain evidence

66. The applicant argued by reference to *DPP v. S.Q.* [2023] IESC 8, that the gardaí have a heightened duty to seek out and obtain evidence, where the request originates from a lay litigant. The applicant referenced the following observation from the judgment of *S.Q.* “*the duty goes some way to redressing the imbalance between prosecution and defence in light of the powers of the gardaí to investigate and collect evidence*”.

67. The applicant argued that the consequence of the failure to obtain statements was such that the applicant was hamstrung from challenging the credibility of Mr. Doyle on the basis of his disqualification from driving. By failing to obtain statements, the applicant could not be expected to know what the relevant witnesses would say.

Errors of law

68. The arguments relating to the errors of law were refined at the hearing of the application. However, the applicant’s submission that the Circuit Judge erred in suggesting that the witnesses could be subpoenaed remained relevant where the applicant continued to assert that the witnesses were relevant.

69. The respondent submitted that the applicant was erroneous in his suggestion that by virtue of not having statements of the witnesses, the applicant would be uncertain as to what evidence might be adduced by the witnesses and that without a previous statement, it would be impossible for the applicant to deem the witness inconsistent with their previous statement. The respondent noted that if the attendance of the witnesses were secured properly, and the prosecution refused to call them, the court retained the power to call the witness and have them cross-examined by both sides.

Failure to investigate

70. The applicant's legal argument as to what precise duty the gardaí are accused of having breached is quite sparse. While several instances of supposed "failures to investigate" are outlined, no attempt is made to connect this to the alleged unfairness of the applicant's trial for assault.

71. The respondent drew the court's attention to the judgment of Gearty J. in *DPP v. Doyle* [2020] IEHC 120. The crux of the respondent's argument was that the applicant had not identified any investigative shortcoming which would deprive him of the ability to raise an issue material to his defence. This was particularly the case having regard to the fact that the Circuit Judge was alive to the fact that the applicant was seeking to impugn the credibility of Mr. Doyle by virtue of his disqualified status and the proposition that he contravened this disqualification by driving to the site. The Circuit Judge held that even if this was accepted, he was willing to accept Mr. Doyle's evidence as to the assault, nonetheless.

72. More pertinently, the respondent argued that judicial review is not the appropriate remedy for a complaint of this type. Citing *O'Mahoney v. Hughes* [2018] IECA 264, the respondent suggests that the judicial review proceedings are dressed up as a legal challenge when in reality it amounts to a disagreement with the findings of the court.

73. At the outset, I do not accept the argument that *S.Q.* is authority for the proposition that An Garda Síochána have a heightened duty toward requests raised by lay litigants. First, the *dicta* quoted by the applicant related to the obligation of gardaí to seek out inculpatory and exculpatory evidence; and it is this dual duty which assists in reducing the imbalance of power. I do not consider this the appropriate case to consider the question of whether any state body

in the conduct of criminal investigations has a heightened duty to those representing themselves, particularly in circumstances where the applicant in fact was represented for the Circuit Court hearing and for proceedings before this court.

74. In relation to the ground more generally, I agree that the applicant had measures within his own abilities to secure the attendance of witnesses if he considered that necessary. The investigative obligation of gardaí is not absolute and it is not the case that by failing to obtain statements from Mr. Doyle's wife and father-in-law, that this evidence was in any way lost to the applicant.

75. In fairness to the applicant, very little argument regarding the asserted error of law was advanced. In reality, it merely formed a bridge between the grounds of failure to obtain evidence and the failure to investigate. In any event, I am not satisfied that the trial judge erred in law in any respect. The trial judge was entitled to consider Mr. Doyle credible, even if the disqualified driving was to be accepted.

76. Likewise, I consider that the absence of any legal argument on behalf of the applicant connecting the alleged failure to investigate to the asserted unfairness of the trial was telling. The respondent appears correct in its assertion that, viewed properly, this was an attempt to cloak a disagreement with the findings of the Circuit Court as a legal challenge by way of judicial review.

77. In all the circumstances, I am satisfied that this application should be refused on the bases (a) that the applicant brought his claim out of time and did not provide any satisfactory

reasons why an extension of time was warranted; and (b) that in any event the applicant has not satisfied the court that there was any unfairness in the trial that led to his conviction.

78. As this judgment is being delivered electronically, my provisional view that the respondent, having successfully defended the application, should be entitled to an order for costs against the applicant to be adjudicated in default of agreement. In case there is any dispute in relation to that outcome, I will list the matter for final orders before me at 10.30am on the 13 October 2026.