

## THE HIGH COURT

[2013 No. 380 J.R.]

BETWEEN

JOHN DUNDON

APPLICANT

AND

THE MEMBERS OF THE SPECIAL CRIMINAL COURT

RESPONDENTS

**Judgment of Mr. Justice Hedigan delivered on 31<sup>st</sup> day of May, 2013.**

1. This is an application for leave to seek an order of *certiorari* by way of judicial review quashing the decision of the Special Criminal Court made on the 15<sup>th</sup> May, 2013, in which it refused to adjourn the applicant's trial for the murder of Shane Geoghegan on the 9<sup>th</sup> November, 2008. The application is grounded upon the basis that:

(a) the respondents erred in fact in concluding there was an increasing risk to the life of April Collins the longer the delay in holding the trial, there was an insufficiency of evidence to allow the Special Criminal Court to come to such inclusion;

(b) the Special Criminal Court erred in law in seeking to weigh the right of Ms. April Collins with the applicant's right to a fair trial;

(c) the applicant cannot get a fair trial because of the enormous volume of disclosure delivered to them in the form of 25,000 pages of documents and 1,266 discs of CCTV footage together with two hard drives and a memory stick.

The solicitors and counsel for the applicant say they cannot possibly examine all these properly within the time permitted by their delivery firstly of 2,647 pages of disclosure on the 23<sup>rd</sup> April, 2013 and then the balance on the 2<sup>nd</sup> May, 2013, one month before the trial. T

2. The applicant applied to the Special Criminal Court on the 10<sup>th</sup> May, 2013 for an adjournment. The Court heard from Detective Garda Treacy. He gave evidence of the threat to Ms. Collins' life, in respect of which the applicant had been convicted and sentenced on the 18<sup>th</sup> April, 2012. He testified to the Special Criminal Court that the risk extended to other members of the Collins family. The risk was continuing. This evidence was not questioned. The Special Criminal Court heard submissions from counsel for the applicant concerning the factors to be considered by a court when deciding on prejudice by late disclosure. An adjournment for a period of approximately six months was sought. The Court rose to consider the application. It concluded on the basis of the evidence of Detective Garda Treacy that there was a threat to the life of Ms. Collins and family. The Court considered the case should not be postponed if at all possible. They also considered the age of the case, five years since the murder. They, however, considered that the Court needed to know how much of the disclosure was new in the light of the fact that much of the material disclosed had already been disclosed to the same firm of solicitors and counsel in the two trials for murder of Barry Doyle. He was convicted on his second trial of the murder of Shane Geoghegan. The Court directed that it should be informed what was new and what had already been disclosed. The Court indicated that it might decide to proceed and that ultimately the trial Court could decide whether a fair trial could be had or not. It emphasised the accused must have a fair trial.

3. To determine these matters, the Court adjourned the application to the 15<sup>th</sup> May, 2013. On that day Detective Garda Treacy again gave evidence. He had prepared an 87 page spreadsheet together with a summary that set out what material had previously been disclosed in the Barry Doyle trials and what was new. He testified that the substantial majority of the material had already been disclosed in Barry Doyle. The Court heard details of the various statements. Of the 55 which were new, only 26 related to the arrest, detention and interview of the applicant. The Court was told that nothing of probative value emerged from that process. None seemed of striking importance. Detective Garda Treacy also testified that although the CCTV footage disclosed was enormous, nothing of relevance to the defence was contained therein. Anything required could be easily accessed, he said. Further evidence was given that the book of evidence in the applicant's case was substantially the same as in Barry Doyle's case and that the case would also be reliant on the evidence of April Collins and the admissions of Barry Doyle. There was no dispute that there was a substantial overlap. Counsel for the applicant did, however, indicate that it was a different solicitor, albeit in the same firm, who was dealing with this case. He himself had not seen the documents since 2009 when the Barry Doyle trials concluded. The Court was told by counsel for the respondents that the case was, in reality, a very simple one. It would turn on the evidence of three witnesses concerning certain conversations about the murder.

4. The Court rose to consider its decision. The court summed up the evidence as outlined above. It noted that owing to its heavy list, any adjournment would be for quite a long time. It noted that the Court had an absolute duty to ensure a fair trial for the accused. This Court's jurisdiction to intervene in an ongoing criminal process is a very limited one. Only where it is satisfied that there is a real risk of an unfair trial may it intervene. It will rarely, if ever, intervene where the process is in train and almost never during the course of the trial. Here the proceedings are in train and the Special Criminal Court has carefully considered over two days of evidence and legal submissions whether it should adjourn the applicant's trial.

5. I do not accept that the Special Criminal Court has determined that due to the late disclosure the applicant cannot have a fair trial nor that it has balanced that right against the right to life of Ms. Collins. The Special Criminal Court, in my view, of its deliberations considered that were there to be a risk of an unfair trial, it had an absolute duty to act to ensure he would have a fair trial. That might involve adjourning for a while during the trial or some other action. The Special Criminal Court is by far the better place to court than this Court to identify such danger and to act to avert it. The Special Criminal Court is a Court established under the Constitution

and this Court must and does assume that it will ensure the applicant's full enjoyment of all the constitutional and natural justice rights to which he is entitled. The Special Criminal Court has considered a number of grounds, *i.e.* delay and the risk posed to the Collins family, on the one hand, and balanced those against its own inherent duty and ability to ensure the applicant a fair trial, on the other. It has had a full expose of the applicant's objections on the grounds of the late disclosure and it has come to its conclusions based squarely upon the evidence and submissions it has heard.

**6.** In my judgment those conclusions cannot be challenged in judicial review because they are based upon compelling evidence of an ongoing risk to the main prosecution witness presented to the Court. Thus, its conclusion in this Court cannot be challenged on rationality grounds. The first ground, (a), therefore fails. As decided above, the Special Criminal Court did not in fact accept that there existed a real risk of an unfair trial. It decided that any risk there might be could be addressed by the trial Court itself. That is a very different thing. It means the Special Criminal Court was of the view that the trial Court could resolve any problems that might emerge during the trial so as to ensure a fair trial for the accused. Thus, no balancing of two rights actually emerged. Ground (b) therefore also fails. Ground (c) fails because on the fact there is probably little in the disclosure that will actually be relevant. If it turns out differently in any material and substantial way, the Special Criminal Court has ample jurisdiction so to arrange the trial that any difficulty that may emerge can be dealt with so as to ensure the applicant his right to a fair trial. There is thus in my judgment no arguable case raised and I refuse leave to apply for judicial review.