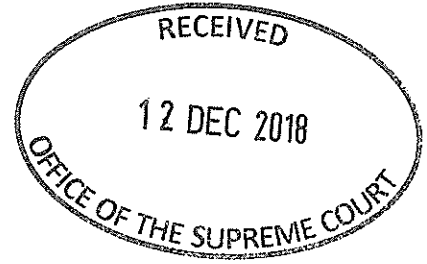


Appendix FF

No. 2



O. 58, r. 18(1)

SUPREME COURT
Respondent's Notice

Supreme Court record number	2018/168
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The People (at the suit of the Director of Public Prosecutions)	V	Gerard Hayes Court of Appeal No. 218/2012
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Date of filing	12-12-18
Name of respondent	Director of Public Prosecutions
Respondent's solicitors	Chief Prosecution Solicitor
Name of appellant	Gerard Hayes
Appellant's solicitors	S. Bartels & Co. Solicitors

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	The Director of Public Prosecutions
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The respondent was served with the application for leave to appeal and notice of appeal on date
28 th November 2018

The respondent intends :

<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
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<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
--------------------------	---

<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
-------------------------------------	---

<input type="checkbox"/>	not to oppose the application for leave to appeal
--------------------------	---

<input checked="" type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
-------------------------------------	--

<input type="checkbox"/>	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court
--------------------------	---

<input type="checkbox"/>	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:	<input type="checkbox"/>
--	--------------------------

Respondent's Representation

Solicitor			
Name of firm	Chief Prosecution Solicitor c/o Jane McKeivitt , Prosecutor		
Email	cca.mailbox@dppireland.ie		
Address	Infirmaroy Road	Telephone no.	858-8500
		Document Exchange no.	DX34
Postcode	Dublin 7	Ref.	2000/423/SUP01
How would you prefer us to communicate with you?			
<input checked="" type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Gerard Clarke SC		
Email	gerardclarke@lawlibrary.ie		
Address	Law Library Four Courts Inns Quay Dublin 7.	Telephone no.	817 4370
		Document Exchange no.	811016
Postcode			

Counsel			
Name	James B Dwyer SC		
Email	jamesbdwyer@lawlibrary.ie		
Address	Law Library Four Courts Inns Quay Dublin 7.	Telephone no.	817 5042
		Document Exchange no.	DX: 813171
Postcode			

If the Respondent is not legally represented please complete the following N/A

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

2. Respondent's reasons for opposing extension of time

Not Applicable

3. Information about the decision that it is sought to appeal

January 2000	The appellant murdered John Robinson by the infliction of 36 stab wounds and 27 cuts administered to the head, neck, chest and limbs.
October 2002	A pre-trial application by the prosecutor to not call two witnesses on the grounds of lack of reliability was refused.
March 2003	The appellant was tried before the Learned Trial Judge and a jury and convicted of murder. He was sentenced to life imprisonment.
May 2003	The appellant wrote to the Learned Trial Judge complaining that he had not received a fair trial.
May 14 th 2012	The appellant appeared in person before The Learned Trial Judge and was refused leave to appeal. He indicated that he had no grounds of appeal and would await the transcript before setting out grounds.
June 24 th 2012	A notice of appeal was filed in the Court of Criminal Appeal with grounds to follow.
June 8 th 2013	Grounds of appeal were filed including seven grounds.
February 2 nd 2017	A notice of motion issued seeking to file further grounds of appeal.
June 23 rd 2017	The Court of Appeal granted the motion of the applicant to add a ground that the absence of a full transcript prevented him from prosecuting an appeal against conviction.
July 3 rd 2017	The appellant brought a further motion seeking to add a ground that the Learned Trial Judge erred in directing the jury that a not-guilty verdict was not open to them. This motion has not been determined but has been adjourned into the hearing of the appeal on January 25 th 2018
January 25 th 2018	The appellant's appeal was heard.
June 26 th 2018	Judgment was delivered by the Court of Appeal.

4. Respondent's reasons for opposing leave to appeal

The decision in respect of which leave to appeal is sought does not involve a matter of general public importance for the following reasons:

1. Section 33(2) of the Courts of Justice Act 1924 (as inserted by s. 7 of the Criminal Justice (Miscellaneous Provisions) Act 1997 and as amended by s. 31(d) of the Criminal Procedure Act 2010) provides for the conduct of appeals "*Where the court is of opinion that either the record or the transcript thereof is defective in any material particular, it may determine the appeal in such manner as it considers, in all the circumstances, appropriate*". The determination of the Court of Appeal to deal with the appeal based on overnight transcripts and a solicitor's note was within the scope of the plain words of the section and not an issue of general importance.
2. There was no unfairness visited upon the appellant by the process under s. 33(2). The appellant was not hindered in bringing the appeal in any way and an accurate record was available which allowed the appellant's appeal be determined fairly. There is therefore no issue of general public importance arising.
3. The issue of improperly directing juries as to verdicts as arose in *People (DPP) v Nally* [2006] IECCA 128 [2007] 4 I.R. 145 does not arise. In this case self-defence did not arise as was conceded at trial by the appellant's senior counsel. Only provocation was left to the jury. Therefore it was not open to the jury to return a non-guilty verdict. Therefore no issue of general public importance arises.

4. There is no evidence of any breach of fundamental rule of law in the trial judge's charge to the jury. No complaint was made in relation to the charge at the time and there is no evidence that it was deficient. Therefore no issue of general public importance arises.

It is not, in the interests of justice, necessary that there be an appeal to the Supreme Court for the following reasons:

1. The records available of the trial (the overnight transcripts) were an adequate record of the appellant's trial to allow his appeal be conducted fairly. There was nothing to suggest they were inaccurate or that any incompleteness rendered the process unfair.
2. The interests of justice do not require an accused person to have a jury return a verdict which is not open to them on the facts and which would be perverse.
3. The interests of justice do not require the Supreme Court to give a definitive view in relation to a set of facts that do not arise in the facts of the appellant's case, namely where there is a suggestion that a case is overwhelming. The interests of justice therefore do not warrant an appeal.
4. The case of *People (DPP) v Nally* [2006] IECCA 128 [2007] 4 I.R. 145 is entirely different to that of the appellant. There the accused sought to litigate self-defence and the jury were wrongly directed it was unavailable. In the appellant's case the appellant's senior counsel properly conceded it was not available on the evidence. The interests of justice therefore do not warrant an appeal.
5. It is not in the interest of justice for the Supreme Court to express a view on a point of law merely because the Court of Appeal declined to address the issue as it was not raised in the trial court. The interests of justice therefore do not warrant an appeal.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

1. It is submitted the Court of Appeal did not err in law and in fact in determining the appeal in the manner it did which was in accordance with s. 33 of the Courts of Justice Act 1924 (as inserted by s. 7 of the Criminal Justice (Miscellaneous Provisions) Act 1997 and as amended by s. 31(d) of the Criminal Procedure Act 2010).
2. It is submitted there was no error in fact or law in determining that the trial of the appellant was satisfactory in circumstances where there was a record of the trial and no basis to suggest the record was inaccurate.
3. It is submitted that there is no error in a trial judge in telling a jury that a verdict is not open to them when it does not arise from the facts and the parties are agreed.
4. It is submitted that it is not a fundamental principle of criminal law that a jury can return a verdict not open to them on the facts nor was there any misdirection by the trial judge. Therefore there was no reason to depart from the principle in *People (DPP) v Cronin (No. 2)* [2006] IESC 9 [2006] 4 I.R. 329.
5. The respondent will rely on the following authorities:

R. v Oliva [1965] 1 W.L.R. 1028

People (DPP) v MacEoin [1978] I.R. 27
People (DPP) v Davis [1993] 2 I.R. 1
People (DPP) v Mullane unreported Court of Criminal Appeal, March 11, 1997
People (DPP) v Kelly [2000] 2 I.R. 1
People (DPP) v Cronin (No.2) [2006] IESC 9 [2006] 4 I.R. 329
People (DPP) v Foley [2006] IECCA 72 [2007] 2 I.R. 486
People (DPP) v Nally [2006] IECCA 128 [2007] 4 I.R. 145
Savage v DPP [2008] IESC 39 [2009] 1 I.R. 185

Gerard Clarke SC James B Dwyer SC

6. Additional grounds on which decision should be affirmed

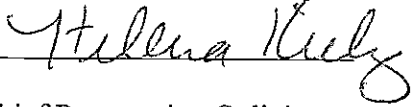
N/A

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? Yes No
If Yes, please give details below:

make a reference to the Court of Justice of the European Union? Yes No
If Yes, please give details below:

Will you request a priority hearing? Yes No
If Yes, please give reasons below:

Signed: 
Chief Prosecution Solicitor
Solicitor for the respondent

Please submit your completed form to:

The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.