

Appendix FF

Order 58, rule 15

No. 1

SUPREME COURT**Application for Leave and Notice of Appeal****For Office use**

Supreme Court record number of this appeal	2017 119
Subject matter for indexing	

Leave is sought to appeal from	
<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court

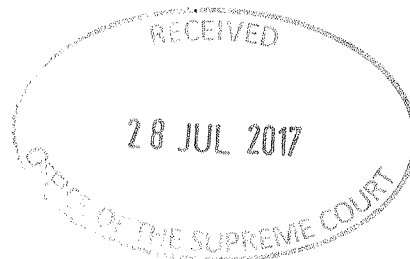
[Title and record number as per the High Court proceedings]

	V	
High Court Record Nr		Court of Appeal Record Nr 63/16
Date of filing	27 July 2017	
Name(s) of Applicant(s)/Appellant(s)	Christopher McNamara	
Solicitors for Applicant(s)/Appellant(s)	Kiely McCarthy Solicitors	
Name of Respondent(s)	Director of Public Prosecutions	
Respondent's solicitors	Chief Prosecution Solicitor	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If Yes, please explain why		

1. Decision that it is sought to appeal

Name(s) of Judge(s)	Birmingham, Mahon, Edwards
Date of order/ Judgment	3rd March, 2017



2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	Christopher McNamara
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Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input checked="" type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

Solicitor			
Name of firm	Kiely McCarthy Solicitors		
Email	info@kielymccarthy.ie		
Address	1 New Wellington Terrace O'Connell avenue Limerick	Telephone no.	061-461024
		Document Exchange no.	DX3038 Limerick
Postcode		Ref.	

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Michael Bowman SC		
Email	mbowmanbl@gmail.com		
Address	Suite 305(a) Capel Building Mary's Abbey Dublin 7	Telephone no.	01-8741604
		Document Exchange no.	DX301084
Postcode	D7		

Counsel			
Name	Marc Thompson Grolimund BL		
Email	mtgrolimund@yahoo.co.uk		
Address	Law Library Criminal Courts of Justice Parkgate Street, Dublin 7	Telephone no.	086-1774901
		Document Exchange no.	DX301063
Postcode	D7		

If the Applicant / Appellant is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

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)

3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	The Director of Public Prosecutions
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Original status	<input type="checkbox"/>	Plaintiff	<input type="checkbox"/>	Defendant	Is this party being served with this Notice of Application for leave?			
	<input type="checkbox"/>	Applicant	<input type="checkbox"/>	Respondent				
	<input checked="" type="checkbox"/>	Prosecutor	<input type="checkbox"/>	Notice Party				
	<input type="checkbox"/>	Petitioner	<input type="checkbox"/>					
					Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

Solicitor			
Name of firm	Chief Prosecution Solicitors		
Email	patrick.geraghty@dppireland.ie; margaret.moran@dppireland.ie		
Address	90 North King Street	Telephone no.	018588500
	Smithfield	Document Exchange no.	DX38
	Dublin 7	Ref.	
Postcode	D7		

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input checked="" type="checkbox"/>	Other (please specify) Not as of yet

Counsel			
Name	Michael P. O'Higgins		
Email	mpohiggins@lawlibrary.ie		
Address	The Law Library Building	Telephone no.	01-8174410
	158-159 Church Street	Document Exchange no.	DX815113
	Dublin 7.		
Postcode	D7		

Counsel			
Name	Maurice Coffey		
Email	mcoffey@lawlibrary.ie		
Address	Law Library,	Telephone no.	087-2433489
	Criminal Courts of Justice,	Document Exchange no.	DX 301017
	Parkgate Street,		
	Dublin 7		
Postcode	D7		

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	

Telephone no.	
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Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

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

Please set out below:

Whether it is sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) the specific part or parts of the decision concerned

(a) -It is sought to appeal from the entire decision.

(b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute

(b) -a concise statement of the facts that are not in dispute:-

- a) The appellant pleaded not guilty to the sole count of murder, on bill number CC 71/11, before Mr Justice Sheehan in the Central Criminal Court, and was convicted by a jury on 24th January, 2014.
- b) The injured party, James Boyce, was known to the appellant and the appellant would often call to Mr Boyce's home to help with house chores. The injured party died as a result of injuries inflicted by the appellant. The injuries were inflicted with a sweeping brush.
- c) Professor Cassidy's post mortem examination confirmed that Mr Boyce had been the victim of an assault with a weapon or object with a long narrow striking edge. The fatal injuries were to the neck. The brush head found in the bedroom could have caused the tramline injuries. Professor Cassidy stated that the deceased would have had to have been struck with considerable force to cause the extensive damage to the larynx and a fracture to the cervical spine. Professor Cassidy stated that "*the mechanism of death due to neck trauma is complex*", that there was no asphyxia signs, so there was nothing to suggest there was a sustained pressure across the neck. Professor Cassidy accepted that because Mr Boyce had some coronary difficulties before, his body was less equipped to cope with that kind of disaster than an average 25 year old healthy man. Professor Cassidy confirmed that unlike other injuries, the consequences of which are "*predictable*", injuries like those suffered by Mr Boyce are "*not in the same league*".
- d) After the Trial Judge gave his charge to the jury counsel on behalf of the prosecution made a number of requisitions. Counsel on behalf of the prosecution noted that the "*case has netted itself down to available verdicts of murder or manslaughter*" and submitted that it might be of assistance to remind the jury that "*the mens rea as to murder is not what's required and that is not the test. It's an intention to cause*

serious harm”.

- e) The Trial Judge was requisitioned on multiple occasions by counsel for the appellant and, in fact, an application was made to discharge the jury at one.

SUBMISSIONS BY COUNSEL FOR THE APPLICANT:-

Both counsel for the Applicant and counsel for the Respondent requisitioned the Trial Judge to recharge the jury. The Trial Judge was requested to remind the jury of the distinction between murder and manslaughter as it had become apparent that the Applicant was accepting that he caused the death of the Mr Boyce, but was not accepting that it was intentional.

The principle contention by counsel for the Applicant is that there was a failure on the part of the Trial Judge to clarify the distinction between murder and manslaughter.

A. THE TRIAL JUDGE RULED AS FOLLOWS:-

The Trial Judge recharged the jury in the following term; *“The defence, in urging manslaughter, urged you to take into account Professor Cassidy’s evidence and the uncertainty raised by the various possible causes of death and that you would also that you’d take Professor Cassidy’s evidence into account when considering whether or not the prosecution has discharged the onus of proving that the presumption that a person intends the natural and probable consequences of their actions has not been rebutted and that of course depends on the view you take as to what those actions in fact were. And again in the context of all this I’d simply remind you that again in cross-examination Professor Cassidy did say to you that certainly people can have their necks compressed or struck and have no side effects at all.*

THE COURT OF APPEAL:

The Applicant appealed against his conviction to the Court of Appeal on the following grounds:-

1. The Learned Trial Judge erred in law or in fact or in a mixed question of law and fact in refusing to re direct the jury, adequately or at all, in accordance with the requisitions raised by counsel for the applicant
2. The verdict is perverse and against the weight of the evidence.

THE RELEVANT ORDERS AND FINDINGS MADE IN THE COURT OF APPEAL

- a) While the notice of appeal to the Court of Appeal had indicated that there were two grounds of appeal, the only ground of appeal argued related to the judge's charge and how he dealt with requisitions.
- b) The Court of Appeal dismissed the applicants appeal.
- c) The Court of Appeal held that it must be appreciated that everyone was agreed that there had been an unlawful killing and that there were only two possible verdicts, murder or manslaughter. Therefore, if the prosecution could not prove that the Applicant had acted with the requisite intention for murder, then by default the appropriate verdict was manslaughter.
- d) The Court of Appeal held that Trial Judge provided an entirely accurate definition of murder. By having the jury focus on the necessary ingredients of the offence of murder the judge properly equipped the jury to decide whether to return the alternative verdict of manslaughter.
- e) The Court ruled that the Trial Judge had provided adequate guidance to the jury.

5. Reasons why the Supreme Court should grant leave to appeal

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)—

Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

1. This appeal concerns an issue of general public importance as it concerns the charge that should be given to a jury when a jury has to consider whether a citizen is guilty or not of the most serious offence known to law.
2. This appeal concerns an issue of general public importance regarding the direction to be given to a jury when the key issue to be deliberated upon is whether the defendant is guilty of murder or manslaughter. Whether or not a trial judge, in a case where manslaughter is accepted by the defendant, is obliged to provide the jury with sufficient guidance on the distinction between murder or manslaughter or whether it is simply sufficient to provide guidance on the murder charge and treat the manslaughter as an "*alternative verdict*".

6. Ground(s) of appeal which will be relied on if leave to appeal is granted

Please list (as 1, 2, 3, etc) concisely:

the specific ground(s) of appeal and the error(s) of law related to each numbered ground

1. The Court of Appeal erred
2. The Court of Appeal erred in holding that the learned trial judge did not have clarify the distinction between murder and manslaughter for the jury.
3. The Court of Appeal erred when it ruled that, in cases where the fact that an unlawful killing is accepted and there are only two possible verdicts, as long as the trial judge provides an accurate definition of murder then the jury is properly equipped to decide to return the alternative verdict of manslaughter.
4. The Court of Appeal erred in describing/categorising manslaughter as an “*alternative verdict*” to murder which did not need to be clearly distinguished from murder.
5. The Court of Appeal erred in failing to play any, or any sufficient regard, to the principle of *res judicata*, by failing to adopt the reasoning set down in the Court of Appeal decision of DPP v. Solowiow where the Court of Appeal refused an appeal on a similar issue to the one in the herein proceedings on the basis that the Trial Judge was not requisitioned on the point.

the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom

In respect of grounds 1, 2, 3 & 4:-

It is submitted that the Trial Judge inadequately directed the jury in relation to the correct test to be applied when dealing with the distinction between murder and manslaughter.

It is submitted that the jury should have been directed by the Trial Judge that the Appellant was guilty of manslaughter if it was satisfied that the prosecution had proven:-

- 1) That the Appellant committed an unlawful and dangerous act;
- 2) That that act caused the victim’s death; and
- 3) That, although the accused may have intended to cause some physical harm to the victim, he did not intend to kill him or cause him serious injury.

In respect of ground 5

It is submitted that the Court of Appeal to have any regard, or any sufficient regard to its own decision in *DPP v. Solowiow*. The details of this case were clearly set out in the submissions

of the Applicant and a copy of the case was handed into that Court as part of the Applicant's booklet of authorities. The principle of res judicata is one of the cornerstones of the criminal justice system and its application is applicable to all courts.

3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely

- a) Section 4 of the Criminal Justice Act, 1964

4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

- a) Whether a trial judge is obliged to clearly distinguish between murder and manslaughter when the jury is being charged with deliberating between the two verdicts;
b) To what extent can the courts infer a knowledge of the law on behalf of the jury.

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

Ted McCarthy, Kiely McCarthy Solicitors instructing

Michael Bowman SC and Marc Thompson Grolimund BL

7. Other relevant information

Neutral citation of the judgment appealed against *e.g.* Court of Appeal [2015] IECA 1 or High Court [2009] IEHC 608

Court of Appeal: DPP v McNamara (delivered on 3rd March 2017) Record No.: 63 / 2016

(Original Court of Trial): Central Criminal Court Bill No.:- CC 71/2011

References to Law Report in which any relevant judgment is reported

N/A

8. Order(s) sought

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

An order quashing the conviction of the Appellant for the offence of murder.

What order are you seeking if successful?

Order being appealed: set aside vary/substitute

Original order: set aside restore vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? Yes No

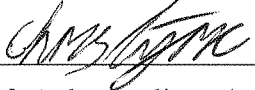
If Yes, please give details below:

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: 
(Solicitor for) the applicant/appellant



Please submit your completed form to:

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

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.