



**AN CHÚIRT UACHTARACH
SUPREME COURT**

S:AP:IE:2023:0047

[2024] IESC 44

**Charleton J.
O'Malley J.
Hogan J.
Murray J.
Donnelly J.**

BETWEEN/

THE PEOPLE (DIRECTOR OF PUBLIC PROSECUTIONS)

PROSECUTOR/RESPONDENT

AND

MARK CRAWFORD

DEFENDANT/APPELLANT

**JUDGMENT of Mr. Justice Gerard Hogan delivered on the 14th day of October
2024**

Introduction

1. I agree that this appeal should be dismissed, essentially for the reasons already given by Donnelly J. in the judgment which she will presently deliver. I agree with her analysis of the substantive issues which arose in the course of this appeal.

2. I propose, however, to address separately the important question of whether the effect of s. 18 of the Non-Fatal Offences against the Person Act 1997 (“the 1997 Act”) is to replace the common law rules as to self-defence in cases of homicide. These common law rules were set down by this Court in *The People (Director of Public Prosecutions) v. Dwyer* [1972] IR 416.
3. The question now for this Court is whether s. 18 of the 1997 Act applies to fatal as well as non-fatal offences, such that it would be potentially available in a case where (as here) the accused raises the defence of self-defence to a murder charge. This issue certainly presents difficult and somewhat unusual questions of statutory interpretation. Yet I think it plain that the Oireachtas has in fact changed the law such that the law as to self-defence is now to be found in s. 18 of the 1997 Act and nowhere else. Despite the language of the Short Title of the 1997 Act – with its reference to “non-fatal” offences – I consider that s. 18 sets out a defence of self-defence in general terms which applies to all offences and not just to non-fatal offences.

Sections 18 and 22(2) of 1997 Act

4. The starting point is that I consider it plain from an analysis of the text of s. 18 that it applies to all offences, both fatal and non-fatal offences alike. Further support for this conclusion may be obtained from a consideration of s. 22(2) of the 1997 Act.
5. The first thing to note about s. 18 is that viewed at least within its own four corners, it applies to *all* offences. It does not seek to distinguish between fatal and non-fatal offences. Of course, as Murray J. indicated in *Heather Hill v. An Bord Pleanála* [2022] IESC 43, [2022] 2 ILRM 313, the exercise of statutory interpretation requires the court to have regard to the relevant context. This means that regard must be had to the entirety of the legislation and the relevant words or even a section

of an Act cannot be viewed in isolation. As Black J. famously said in *The People (Attorney General) v. Kennedy* [1946] IR 517 at 536:

“A small section of a picture, if looked at close-up, may indicate something clearly: but when one stands back and views the whole canvass, the close-up view of the small section is often found to have been given a wholly wrong view of what it really represented.”

6. It is true that the 1997 Act may be regarded as being principally a codifying statute dealing with non-fatal offences, including assault, threats to kill or to cause serious harm and false imprisonment. While the Long Title declares that the 1997 Act is an Act “to revise the law relating to the main non-fatal offences against the person”, it also “provides for connected matters.” It is thus clear from the Long Title that this legislation is not *exclusively* concerned with the revision of the law in relation to non-fatal offences and, indeed, quite independently of s. 18, there are a range of provisions which plainly are of general application, and which are not merely consequential upon the revision of the law in relation to non-fatal offences. It is perhaps sufficient to point here to s. 25 which relates to the evidential status of a certificate given by a registered medical practitioner.
7. All of this is re-inforced by a consideration of the terms of ss. 18 and 22. Quite independently of the perfectly general language of s. 18, if the application of the section were to be confined purely to non-fatal offences the potential for anomaly and arbitrariness would be considerable. Take the case of where A strikes and kills B and inflicts serious harm on C. Leaving aside any possible examples relating to a dwelling (as this is governed by the Criminal Law (Defence and the Dwelling Act 2011), let us suppose that A’s case is that he acted in self-defence to repel the actions

of B and C who, he contends, had broken into his office and had threatened to kill him. In the course of ensuing fracas, A kills B and wounds C.

8. Let us further suppose that A is then charged with the murder of B and with having caused serious harm to C within the meaning of s. 4(1) of the 1997 Act. At the subsequent trial of A in respect of these offences is to be said that the self-defence argument in respect of the murder charge is governed by the *Dwyer* test, while the scope of the self-defence defence in respect of the serious harm s.4 offence is to be found in s. 18 only? If this question were to be answered affirmatively the section would prove to be almost unworkable in a case of this kind and it would inevitably lead to indefensible anomalies.
9. One may, I suggest, take it as a working rule that the Oireachtas should be presumed not to have legislated directly so as to create a potentially arbitrary and unfair anomaly if such an interpretation can reasonably be avoided. If, therefore, the Oireachtas is taken to have confined the scope of the s. 18 defence to non-fatal cases only, it would mean that the Oireachtas in the course of revising the criminal law had legislated to create a new and unjustifiable form of anomaly in the scope of criminal defences. It is essentially for that reason that I would reject the argument that s. 18 is implicitly confined in its scope to non-fatal offences only.
10. There is, in any event, long-established authority from this Court to the effect that such a potentially unworkable interpretation of legislation with all its potential for anomaly and confusion “should not be read into the section if another and more reasonable interpretation is open”: *Rowe v. Law* [1978] IR 55 at 72, per Henchy J. In the present case there is, of course, another and more reasonable interpretation, which is open, namely, that the s. 18 defence applies indistinctly to both fatal and

non-fatal offences alike. It is essentially for that reason that I would reject the argument that s. 18 is implicitly confined in its scope to non-fatal offences only.

11. Further support for this textual analysis of the 1997 Act is supplied by s. 22(2) which provides that “any defence under the common law in respect of the use of force within the meaning of section 18 or 19...for the purposes mentioned in section 18(1) or 19(1) is hereby abolished.” As the very words of this sub-section demonstrate, the Oireachtas clearly intended to abolish the common law in respect of these defences. Quite apart from the fact that there is nothing at all in this sub-section – or, for that matter, in s. 18 itself – which seeks to draw a distinction between fatal and non-fatal offences for this purposes, I repeat again that one could not fairly ascribe to the Oireachtas an intention to create new and striking anomalies by confining the scope of the abolition of the common law defences effected by s. 22(2) to non-fatal offences only.

The Short and Long Titles to the 1997 Act

12. The case to the contrary rests in large part on the fact that the Short Title to the 1997 Act refers to non-fatal offences only. This was what prompted Hardiman J. when delivering the judgment of the Court of Criminal Appeal in *The People (Director of Public Prosecutions) v. Barnes* [2006] IECCA 165, [2007] 3 IR 130 at 144 to observe that s. 18 had introduced an “anomaly in our law” in that the section applied only “as the title [of the 1997 Act] suggests to the use of non-lethal force.” One can perfectly understand these comments, but they were *obiter* as this issue was not directly before the Court in *Barnes*. In this appeal, however, we have had the benefit of much fuller argument on the point, and I am, with respect, not persuaded that in this respect Hardiman J. was correct.

13. The great Victorian parliamentary drafters such as Sir Henry Thring and Courtenay Ilbert revolutionised the drafting of the British legislation in the late 19th century. The elegance of drafting and the tidiness and structure of modern legislation owes much to their efforts. Up to that point legislative titles had tended to be long and unwieldy. Ilbert had argued that short titles aided the legislative drafter and also reduced the length and costs of legal documents: see *Legislative Methods and Forms* (Oxford, 1901) at 75-76. The Short Titles Acts of 1892 and 1896 sought to address this drafting difficulty: as the Long Title to the 1896 Act put it, this Act was intended “to facilitate the Citation of Sundry Acts of Parliament.”
14. The key point, however, about the Short Title is that it was and is intended to be facilitative and descriptive. It does not purport to be definitive regarding the scope of the legislation it describes: if it did, one would probably have to go back to the days of cumbersome and unwieldy legislative titles in order to describe all relevant features of the legislation, thus undermining Ilbert’s reforming objectives. In *Re Boaler* [1915] 1 KB 21 at 40-41 Scuttron J. acknowledged the importance of the Short and Long Titles as an aid to construction. He nonetheless observed that “the court should give less importance to the title than to the enacting part, and less to the short title than to the full title, for the short title being a label, accuracy may be sacrificed to brevity...” In the present case s. 32(1) of the 1997 Act provides that it “may be cited as the Non-Fatal Offences against the Person Act 1997” (emphasis supplied): no one, after all, is *obliged* to use this particular short form description.
15. I agree, of course, that both the Short Title and the Long Title form part of the Act and, as such, they form part of the overall legislative context to which Murray J. referred in *Heather Hill*. Both the Short Title and the Long Title can be looked at as a guide to interpretation and both will often provide useful assistance, particularly

where a schematic or purposive interpretation of the legislation in question is called for. Yet, as this Court confirmed in *The People (Director of Public Prosecutions) v. Quilligan* [1986] IR 495, neither the Short Title nor the Long Title can be used to modify or limit the interpretation of otherwise plain and unambiguous language of the legislation at issue.

- 16.** Here the Short Title may be said to have indicated that the principal purpose of the 1997 Act was to deal with non-fatal offences. Yet it cannot be said that this was the exclusive object of the legislation, since the 1997 Act deals with many other matters such as bail and extradition as well, even if these provisions may generally be regarded as ancillary or consequential.
- 17.** In many ways, this aspect of the case is indistinguishable from *Quilligan*. That case concerned the use of the arrest powers contained in s. 30 of the Offences against the State Act 1939 in the context of “ordinary” crimes. While the Short and Long Titles of the 1939 Act all clearly indicated that its principal objective was to deal with the threat posed by illegal organisations, this Court held that the substantive powers of arrest and the scheduling of offences were not so confined. The plain and unambiguous language of these provisions contained no such limiting power and this Court rejected the argument that these provisions should be read down in the light of the language of the Short and Long Titles. As Henchy J. put it ([1986] IR 495 at 513, “it does not follow from the statutory scheme that the [1939] Act draws a clear line in all cases between ‘subversive’ and ‘ordinary’ offences.”
- 18.** The same can be said here. Even if one accepts – contrary to my own view – that the language of the Short Title comprehensively defines the scope of the 1997 Act, the plain and unambiguous language of ss. 18 and 19 is such that these provisions must prevail. It can thus equally be said in the present case that it does not follow

from the scheme of the 1997 Act that it draws a clear line between fatal and non-fatal offences.

The presumption against unclear changes in the law

19. A related argument is based on the presumption against unclear changes in the law.

It is said that given the authority of *Dwyer*, had the Oireachtas wished to change the law as to self-defence in fatal cases, it ought to have done so clearly: see *The People (Director of Public Prosecutions) v. Brown* [2018] IESC 67, [2019] 2 IR 1 at 110 per Dunne J. I think that the immediate answer is that there is nothing unclear about either s. 18 or s. 22(2): they both evince an intention to change the law in relation to the law of self-defence in all cases. After all, the presumption applies in any event only where “the words of the section were ambiguous or vague”: see *The People (Attorney General) v. Harte* [1946] IR 110 at 119, per O’Byrne J. The argument to the contrary rests on a suggested *implied* limitation as to the scope of these provisions derived from the language of the Short and Long Titles of the Act.

20. So stated, it is clear that this argument is really nothing more than a re-packaged version of the argument based on the Short and Long Titles, which argument I have already rejected. Yet even if it were to be said that the presumption against unclear changes in the law was brought into play in the present case, I consider that it would have to yield in the circumstances to the necessity to interpret s. 18 in a coherent and logically consistent way. Faced with a choice between two interpretations which are reasonably open, the Court should, I believe, opt for that interpretation which avoids an indefensible anomaly.

21. To this I would add that the common law rules relating to self-defence had never distinguished between fatal and non-fatal offences: see Charleton & McDermott’s *Criminal Law and Evidence* (Dublin, 2020) at para. 17.42. Had the Oireachtas when

enacting s. 18 intended to introduce such a significant change as between non-fatal offences on the one hand and fatal offences on the other so that s. 18 applied only to the former and not to the latter, it is to be expected that this would have been clearly stated. As O’Byrne J. stated in *Harte*, where the Oireachtas “creates a revolutionary change in the pre-existing law, no greater change should be held to have been effected than the words of the Act clearly contemplate”: [1946] IR 116 at 118-119.

22. Here s. 18 effected a far-reaching re-statement and modification of the pre-existing common law in respect of self-defence in terms which are capable of applying equally to fatal and non-fatal offences alike. To repeat, therefore, had it been intended that the new s. 18 would introduce a new distinction between these categories of offences, this would have been clearly and expressly stated. As s. 18 contains no such statement, this is yet a further reason why I believe that the s. 18 defence should be interpreted as applying to both fatal and non-fatal offences alike.

The *Barras* principle

23. The final argument relates to the presumption that the Oireachtas must be taken to have legislated by reference to well-established earlier judicial authority, so that the authority of *Dwyer* remains undisturbed so far, at least, as fatal cases are concerned. This is the so-called *Barras* principle: *Barras v. Aberdeen Steam Trading Co.* [1933] AC 402. As Lord Buckmaster observed in that case ([1933] AC 402 at 411: “...where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it.”

24. This principle has been applied by this Court: see, *e.g.*, *Attorney General (Fahy) v. Bruen (No.2)* [1937] IR 125 at 163-164 per FitzGibbon J.; *Cronin v. Youghal Carpets (Yarns) Ltd.* [1985] IR 312 at 321, per Griffin J.; *Clinton v. An Bord Pleanála* [2006] IESC 58, [2007] 1 IR 272 at 295 per Fennelly J. and *MAK v. Minister for Justice and Equality* [2018] IESC 18, [2019] 1 IR 217 at 229-231, per O'Donnell J. As *Clinton* and *MAK* both make clear, the principle is, in any event, simply a presumption and, as such, it is, as Henchy J. noted in *Inspector of Taxes v. Kiernan* [1981] IR 117 at 123, “subject to considerable qualification”.
25. This principle was, however, applied in respect of well-known legal phrases, such as “bona fide traveller” in *Fahy* and “total income” in *Cronin*. Thus, in *Fahy* this stock phrase had been used without elaboration or definition in the Intoxicating Liquor Act 1927 and it is not really surprising that FitzGibbon J. rejected the argument ([1937] IR 125 at 163) that this Court “should interpret that legislation *de novo*, as if there had been no previous decisions upon its meaning.”
26. For my part, however, I see little basis for the application of this presumptive principle to the present case. One may agree that the Oireachtas was presumably aware of this Court’s decision in *Dwyer*. Yet it must be recalled that as this Court has consistently held in a line of cases from *Kiernan* to more recent judgments such as *Clinton* and *MAK*, the *Barras* principle is only a presumption, and it can be rebutted where appropriate. Here the case for the rebuttal of the presumption is a strong one. It is perfectly clear that the Oireachtas intended to re-state the law as to self-defence in the manner in which it is in s. 18, the decision in *Dwyer* notwithstanding. The very language of s. 22(2) – with its deliberate abolition of the pre-existing common law – comprehensively indicates that there is little room for suggesting that the Oireachtas was merely re-stating the decision in *Dwyer*.

Conclusions

- 27.** Summing up, therefore, I consider that the better interpretation of s. 18 of the 1997 Act is that it applies indistinctly to *all* offences, so that it governs both fatal and non-fatal offences alike. This interpretation enjoys an internal coherence and is one which preserves the unity of the defences available in criminal law. It is, after all, a general principle of the criminal law that the scope of general defences – such as self-defence – should not depend on the nature of the specific offence with which the accused has been charged. One can equally say that the applicability of this defence should not rest on what might prove to be either fortuitous or even accidental factors. More especially this interpretation avoids the potential for anomaly and confusion if the scope of s. 18 were to be held to be confined simply to non-fatal offences.
- 28.** In these circumstances I agree with the judgment which Donnelly J. is about to deliver on this point. I also agree that on the facts of this case, the application of the s. 18 test would not have made any difference to the outcome, since the essence of the jury verdict was to reject the self-defence argument which the defendant had advanced. I would accordingly dismiss the appeal.