

**SUPREME COURT****Respondent's Notice**

Supreme Court record number	S:AP:IE:2016000059
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[Title and record number as per the High Court proceedings]

Director of Public Prosecutions	V	James Costello
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Date of filing	08.06.2016
Name of respondent	Director of Public Prosecutions
Respondent's solicitors	Chief Prosecution Solicitor's Office
Name of appellant	James Costello
Appellant's solicitors	Cagney Kearns Ford

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	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
26.05.2016

The respondent intends :

☐ to oppose the application for an extension of time to apply for leave to appeal

☐ not to oppose the application for an extension of time to apply for leave to appeal

☒ to oppose the application for leave to appeal

☐ not to oppose the application for leave to appeal

☒ to ask the Supreme Court to dismiss the appeal

☐ 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

☐ 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: ☐

Respondent's Representation

Solicitor	Jane McKeivitt		
Name of firm	Office of the Director of Public Prosecutions		
Email	cca.mailbox@dppireland.ie		
Address	90 North King Street Smithfield	Telephone no.	01 8588535
		Document Exchange no.	38
Postcode	Dublin 7	Ref.	2008/61978/SUP01
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Anne-Marie Lawlor BL		
Email	amlawlor@lawlibrary.ie		
Address	Law Library Criminal Courts of Justice Parkgate Street	Telephone no.	0877971758
		Document Exchange no.	301028
Postcode	Dublin 8		

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

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

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

Not applicable

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

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

The Applicant states that an admission made by him in respect of the Complainant S.W. was stated by the Court of Appeal to be; *"admissible as evidence which was probative in respect of each of the other counts"*. The Respondent would ask this Honourable Court to consider the precise finding of the Court of Appeal. The Court of Appeal, in fact, stated the following about this evidence

"This is particularly relevant when one considers the final submission made on behalf of the respondent. While it did not form part of the trial judge's ruling it is germane that the evidence of the appellant's wife regarding his admission that he had abused SW is evidence that was relevant not only to SW's complaint but was also relevant evidence in respect of all other counts on the indictment. This Court holds that this piece of evidence provides strong support for the correctness of the judge's ruling."

The Respondent made the following argument in written submissions before the Court of Appeal –

"The admission which the appellant made to Ita Costelloe when she challenged the accused, after being told by her sisters about his abuse of SW. This admission informed her actions thereafter in relation to access to the Applicant's own children, Adam and Amanda and was relevant to how the extended family dealt with each other thereafter. Accordingly, unless this important admission was to be excised from the case, any jury trying charges concerning any one of the complainants (following a severance of the indictment) would inevitably have to hear of the allegation concerning the other complainants in order to place this correspondence within its proper context. To drop in such an unproven collateral allegation in passing, where the accused would have no real opportunity to rebut it, would surely be detrimental to the conduct of a fair trial. As such there were compelling considerations why these charges had to be heard together, such was the entanglement of the facts surrounding each charge in terms of this particular, and indeed the consistency of the actions of all the related parties over time was a very significant component in the central issue of credibility."

The Respondent submits that the relevance and admissibility of this evidence in respect of all Counts was founded on a consideration of the interests of justice and not the existence of system, as asserted by the Applicant.

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

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)-

- * the decision in respect of which leave to appeal is sought does not involve a matter of general public importance
 - * it is not, in the interests of justice, necessary that there be an appeal to the Supreme Court
1. The law in relation to the severance of counts on an indictment is clear and well established and is set out in the cases of *D.P.P v B.K.* [2000] 2 IR 199, *DPP v B* [1997] 3 I.R. 140, *DPP v O'S* Unreported Court of Criminal Appeal, 28th July 2004 and *Martin McCurdy v DPP* [2012] IECCA 76. The law in this regard has been further clarified to a considerable extent by the judgement of the Court of Appeal in *CC v DPP (No. 2)* Unreported, CCA, O'Donnell J, 6th December 2012. Therefore this decision, which applies the dicta in the above case does not involve a matter of general public importance.
 2. The appeal herein wholly relates to the specific facts of the Applicant's case and demanded an application of well-established principles to those facts. In the premises it is submitted that there could be no general public importance to a reconsideration of those issues. The respective accounts of the complainants were cross admissible simply to show the inherent improbability that two people would make up similar stories and admissible to rebut accident, innocent explanation or denial.
 3. There is no stateable basis for the appeal in circumstances where the Court of Appeal properly applied the principles set out in the cases set out above and it is not necessary, in the interests of justice for there to be an appeal to this Honourable Court. The Court enjoys statutory discretion in respect of such applications and properly exercised its discretion in the instant case.
 4. The bald assertion by the Applicant that the Court ruled on the cross admissibility of a disputed admission in respect of one complainant is artificial and incomplete. The Court clearly accepted a submission by the Respondent that the admissibility of the disputed admission was relevant to all complaints in order to contextualise factual matters in any trial. Therefore the submission that this determination is one of general application is not founded on the facts, nor the ruling of the Court and does not bring this case within the realm of being of general public importance or rendering it one where the interests of justice render it necessary for there to be an appeal.
 5. The Applicant submits that a central element to their contention that the appeal is necessary concerns the consideration of whether there is an "*upper limit to the number of complaints who could be heard together*". The judgment of the Court of Appeal does not consider any submission to the effect that there is some "cut off" point to Respondent's entitlement to try offences together. The First Schedule to the Criminal Justice (Administration) Act of 1924, Rule 3, sets out jurisdiction to try matters together where satisfied that the "*charges were founded on the same facts, or form or are part of a series of offences of the same or similar character*". The Respondent submits that this point could not render the instant appeal one which meets the criteria set out in Article 34.3.3 of the Constitution where the point was not one upon which the Court made a determination. In the alternative it is submitted that this point had no prospect of success where the law is perfectly clear in this regard.

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

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. The learned Trial Judge was correct in law and in fact in refusing to direct separate trials
2. The trial judge did as he was required to do, namely, to have regard to the nature of each of the complaints and to consider the issue as to whether or not the fact of the multiplicity of complainants was relevant to show the inherent improbability that two or more people would make up similar stories was admissible to rebut accident or innocent explanation.
3. The Court properly applied the law in relation to the severance of counts as set out in the cases of *D.P.P v B.K.* [2000] 2 IR 199, *DPP v B* [1997] 3 I.R. 140, *DPP v O'S* Unreported Court of Criminal Appeal, 28th July 2004, *Martin McCurdy v DPP* [2012] IECCA 76 and *CC v DPP (No. 2)* Unreported, CCA, O'Donnell J, 6th December 2012.
4. The Court was not invited, nor did it, engage in an exercise of deciding whether there was some absolute cut off point in respect of the number of complaints which could proceed together. The Court properly and lawfully engaged in the exercise of its discretion on the basis of the facts in the case.
5. The Court lawfully determined that the alleged admission, by the Applicant, of wrongdoing in respect of one complainant was relevant evidence in the trial in order to contextualise evidence and in the interests of justice.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Anne-Marie Lawlor B.L.

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

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: HELENA KIELY
(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.