

No. 2

O. 58, r. 18(1)



SUPREME COURT



Record No:

2019:00019

Respondent's Notice

Part I

The information contained in this part will be published. It is the respondent's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. **Title of the Proceedings:** *[As in the Court of first instance]*

DIRECTOR OF PUBLIC PROSECUTIONS

-v-

WAYNE KINSELLA

2. **Name of Respondent:** **DIRECTOR OF PUBLIC PROSECUTIONS**

3. **Application to extend time:** Yes No

If an application is being made to extend time for the filing of this Notice, please set out concisely the grounds upon which it is contended time should be extended.

4. Do you oppose the applicant's application to extend time:

Yes No

If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.

5. Do you oppose the applicant's application for leave to appeal:

Yes

6. Matter of general public importance:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. No issue of general public importance, nor one touching on the interests of justice arises in this case. What occurred in the instant case is fact/ case-specific to the prosecution herein, and does not raise issues going to general public importance.
 2. The factual circumstances of this case are unremarkable and the applicability of established principles pertaining to corroboration and the issue of what evidence might constitute corroboration where the credibility and reliability of Prosecution witnesses are in issue, are not called into question.

3. This case has not identified any issues of law in relation to corroboration which warrant any elucidation, any extension, or any further clarity.
4. Contrary to what the Applicant contends the law is very well established in relation to corroboration. Whilst constituting an important principle of the law that is frequently before the courts and being an issue that trial judges address on a regular basis, such frequency in and of itself and without more, does not render it an issue coming within the threshold of general public importance, such as to permit of this appeal. This is particularly so against the existing background of established judicial pronouncements on the issue.
5. There is no lack of clarity or ambiguity in the law in this area as is apparent from the cases of AG v Levison 1932 IR , DPP v Gilligan 2006 1IR 107, DPP v Meehan 2006 3IR 468.
6. The Applicant incorrectly suggests the test applied by the Court of Appeal in the instant case was whether the evidence was consistent with guilt. It is abundantly clear that the Court considered that the nature of corroborative evidence depends on the facts and circumstances of the case and the defence of an accused.
7. The Applicant suggests that whilst he was present at the murder, he did not actively participate and complains that evidence confirming his presence should not be regarded as enhancing the reliability of witnesses that he characterises as suspect. The Court of Appeal addressed this issue in a comprehensive manner and applied well settled principles of law to the facts of the case.
8. Contrary to what the Applicant suggests, the Court of Appeal followed established principles of law. The court correctly defined corroborative evidence as evidence which establishes a link which tends to prove that the accused person committed the offence. The Court found that corroboration may be found in a simple fact. For example, in the Attorney General v. O 'Sullivan [1930] IR 552, a case of sodomy, corroborative evidence was the evidence of boxes found in a room.

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. No issue touching on the interests of justice arises in this case.
2. The CCTV footage in issue showed three men leaving Tyrellstown Plaza apartment block via stairs at 21. 10 hours and two people returning by the same route from the direction which the three departed at 21. 36 hours. The only inference is that the late Adil Essahli was murdered in that available narrow time window. Other evidence established that two different types of wounds were inflicted on the deceased firstly wounds inflicted by a knife with a sharp point used to slash and stab, and secondly chop wounds consistent with the use of a machete and furthermore evidence was adduced that the Applicant was labouring under the misapprehension that the deceased was involved in the Applicant's brothers murder.
3. The Applicant complains that the trial judge's direction to the jury regarding their assessment of the accomplice evidence constituted an error. However, the trial judge explained to the jury in a clear and concise manner the reason why a corroboration warning was being given in relation to accomplice evidence and contextualised that warning. Furthermore, the trial judge recharged the jury in unambiguous terms that the accomplice witnesses had lied.
4. The evidence given at trial was that the Applicant and Michael Kinsella returned to the apartment on the night with blood on their clothes and bragging about having killed the deceased. The following day they described how they attempted to burn the body. Furthermore, the Applicant made inculpatory comments to Gardai.
5. The Applicant's contention is unmeritorious and fallacious because it operates on the basis that evidence which would otherwise be corroborative ceases to be so because the Applicant admitted he was present for the murder but claimed not to have participated.

Word count - 294

8. Exceptional Circumstances Article 34.5.4.:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

Word count -

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.

10. Cross Application for Leave:

If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.

If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 500 words and the word count should appear at the end of the text.

Word count -

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.

12. Priority Hearing: Yes No

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

This section should contain no more than 100 words and the word count should appear at the end of the text.

Word count:

13. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union, please identify the matter, and set out the question or questions which it is alleged it is necessary to refer.

This section should contain no more than 100 words and the word count should appear at the end of the text.

Word count:

Part II