HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

ON APPEAL FROM THE
CRIMINAL COURT OF APPEAL
SUPREME COURT OF NEW SOUTH WALES

BETWEEN: SCOTT EDWARDS
Appellant

and

THE QUEEN
Respondent

APPELLANT'S SUBMISSIONS

Part I: SUITABILITY FOR PUBLICATION

1. The Appellant certifies these submissions in a form suitable for publication on the internet.

Part II: ISSUE RAISED ON APPEAL

2. Whether the Court of Criminal Appeal erred in finding the disclosure of the fact of the police initiated Cellebrite download of the Appellant's mobile telephone was sufficient disclosure for the purpose of ss 141 and 142 of the *Criminal Procedure Act 1986 (NSW)* (**CP Act**)[1] of the stored information on the Appellant's mobile telephone.

3. Whether the conviction should be set aside.

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[1] See Core Appeal Book (**CAB**), Court of Appeal p110 [13]; p119 [47]; p 121-125 [52]-[61].

Part III: NOTICE UNDER S 75 *JUDICIARY ACT 1903* (CTH)

4. No notice under s 75 *Judiciary Act* 1903 (Clth) is required.

Part IV: FACTUAL BACKGROUND

The [redacted]

5. The Appellant was born 25 January 1987 and at the date of the alleged offences was 25 years of age.

6. [redacted] She was aged 13 years at the date of the alleged offences. [redacted] She was [redacted] when she gave evidence at the trial. [redacted]

10 [redacted]

7. At the time of the alleged offences, the following people were living in a house [redacted]

8. The Complainant had her own bedroom at the Appellant's residence.[4]

9. A few hundred metres from the house [redacted]

10. At some point in 2012, the Complainant accessed heterosexual pornography on her iPod.[6] [redacted] said she was in the habit of periodically checking the

20 Complainant's internet search history[7] and discovered the Complainant had

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[2] A suburb of Newcastle.
[3] Apellant's Further Material Book (AFM) p136 (Complainant), AFM p94-105 [redacted]
[4] AFM p37.20 (Complainant).
[5] AFM p98.11 [redacted]
[6] CAB, Court of Appeal p111 [16]
[7] AFM p95.48 [redacted]

viewed a pornographic movie.[8]

11. It was alleged the Appellant sent a text message to the Complainant at school stating they had discovered the pornographic movie on her iPad and suggested she delete her internet search history.[9] The Complainant could not recall whether she responded to the Appellant's text message[10]. The Complainant could not recall if, after reading this text, she deleted it.

12. The Complainant said that after the text message, the Appellant made a number of comments to the Complainant that made her feel uncomfortable.[11]

13. The Crown was not able to produce a copy of the text message at the trial.

Boot Camp

14. The Appellant operated a physical fitness instruction business or "boot camp" to individuals in about 2011,[12] under the trade name "Sapphire Boxing" from the home at [redacted] He conducted group lessons with six to eight people participating in them.[14]

15. The Appellant would usually leave the house at about 0500 or 0530 hours and return about 0730 hours.[15]

16. There was conflicting oral evidence as to where the early morning "boot camp" training was conducted. Training classes were held at the house at Fairfield Avenue.[16] The Crown case was they were also conducted at Hudson Park. The Appellant says he operated the "boot camp" at Alder Park as at

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[8] AFM p96.08. [redacted]
[9] CAB, Court of Appeal p111 [16].
[10] AFM p38.57 (Complainant)
[11] CAB, Court of Appeal p111 [16].
[12] AFM p97.47 [redacted]
[13] AFM p97.11-12 [redacted]
[14] AFM p134.10 (Birchill).
[15] AFM p98.31-36 [redacted]
[16] AFM p97.57 [redacted]

2012[17] and was not operating the "boot camp" at Hudson Park.[18] On occasions, he would conduct the classes at Alder Park or at the break wall on the coast.[19] The Complainant said she attended "boot camp" at Hudson Park at Kotara.[20] If it was raining, the classes would be conducted at the Westfield Supermarket complex car park at Kotara.

17. Lynn Birchill (nee Mullens) (**Birchill**) had attended boot camps run by the Appellant in approximately 2012 to 2013.[21] She indicated there were numerous locations where the boot camp was conducted. She stated the first was at Hudson Park[22] and if it was raining, it would be in the carpark at Westfield. She stated she went to Alder Park for training sessions,[23] then to the Appellant's house[24] and later to a studio in Market Square in Newcastle. She would attend up to three times a week at about 0600 or may be 0630 hours.[25] Birchill said the maximum number of people attending the boot camps was probably six to eight.[26] Birchill said the Appellant had a key to the Hudson Park toilets and the Appellant told her it was given to him by the Council.[27]

Council Requirements

18. In order to conduct classes at a park, a licence agreement and fee was payable to the local council.

19. On 21 September 2012, the Newcastle City Council (**the Council**) issued a tax invoice addressed to the Appellant for the amount of $350 for the quarterly fee

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[17] CAB p34-35.
[18] CAB p36.20-.40, see [redacted] AFM p97.9-19.
[19] AFM p98.05, Stephanie, see also Appellant's ERISP Answers 38 and 77.
[20] AFM p40.39-41, AFM p42.8-9. (Complainant)
[21] AFM p133.25 (Birchill).
[22] AFM p133.35 (Birchill).
[23] AFM p133.37 (Birchill).
[24] AFM p135.50 (Birchill).
[25] AFM p133.48 (Birchill).
[26] AFM p134.10 (Birchill).
[27] AFM p134.37-48 (Birchill).

for the licence to conduct personal fitness training at Hudson Park, Kotara on Mondays, Wednesdays and Fridays between 0600 hours and 0900 hours.[28] But the fee was never paid and the issuing of a permit never proceeded.

20. Ms Merle (an employee of the Council) gave evidence there was no record of a key ever being issued or not issued by the Council to the Appellant.[29] In the ordinary course, there would be a record of the key being issued to a licence holder.[30]

The First Boot Camp - Counts 1-5

21. The Complainant said that towards the end of 2012, she was playing hockey for a local team and was representing the Newcastle team in a New South Wales competition and approached the Appellant for help to improve her fitness.[31] She said she attended these boot camps on three occasions with the Appellant in late 2012.[32] at Hudson Park[33] and at the Westfield carpark.

22. It was alleged the first sexual assault incident occurred in November 2012 when the Complainant was aged 13 years.

23. The Complainant stated the Appellant would normally leave the house at 0500 hours but on this occasion, he and she left the house together at 0400 hours.[34] She says they drove together and alone from [redacted] to Hudson Park.[35] The Complainant stated they arrived at Hudson Park at 0415 hours at the carpark behind the canteen.[36]

24. The Complainant says there were no other cars in the carpark and it was

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[28] Exhibit E, see AFM 388.
[29] AFM p122.32 and AFM pp122.56-123.15 (Merle).
[30] AFM p123.13-18 (Merle).
[31] AFM pp39.26-40.15 (Complainant).
[32] AFM pp40.55-41.10 (Complainant).
[33] CAB, Court of Appeal p111 [17]-[18].
[34] CAB, Court of Appeal p111 [17], AFM p41.55 (Complainant).
[35] AFM p39.42 (Complainant).
[36] AFM pp41.59-42.9 (Complainant).

dark.[37] The Complainant stated the Appellant unbuckled both their seat belts and put his hand down the Complainant's pants and started rubbing her clitoris (Count 1/alternative Count 2) for a few minutes. He then pulled her legs over the console, pulled her pants down and licked her vagina (Count 3). He penetrated her with his middle finger (Count 4). There was no evidence of any conversation.[38] He then got out of the car and came around to the passenger side and asked the Complainant to fellate him (Count 5).[39] The sexual activity was then terminated and the two of them then left the motor vehicle and set up the equipment required for the boot camp.[40] The Complainant stated the other participants in the boot camp came over within a couple of minutes.[41] She then participated in the boot camp with the other participants for about an hour.[42] After the class, the Complainant and Appellant packed up the equipment, got back in his utility and travelled home.[43] He allegedly stated:

[redacted]

25. There were no eye witnesses to these alleged offences.

The Second Boot Camp - Counts 6 and 7

26. The second incident is alleged to have occurred about a week later.[44]

27. The Complainant said they left the home at about 0400 hours and travelled together alone to Hudson Park.[45] They were alone and there were no other cars.[46] She says they got out of the utility and the Appellant told her to follow her to the canteen area. The Complainant said he had a key for the men's

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[37] AFM p40.50-55 (Complainant).
[38] AFM p51.38-43 (Complainant).
[39] AFM pp50.9-52.47 (Complainant).
[40] AFM pp52.50-53.10 (Complainant).
[41] AFM p53.17 (Complainant).
[42] AFM p53.26-38 (Complainant).
[43] AFM pp53.40-54.07 (Complainant).
[44] See AFM p54.40 (Complainant).
[45] AFM pp54.43-55.09 (Complainant).
[46] AFM p55.18 (Complainant).

toilets and the Appellant unlocked the door. She said he took her into one of the cubicles and sat her on the toilet seat.[47] The Appellant put his hands in her pants and digitally penetrated her (Count 6) with his 'middle finger'. This was for about 20 seconds. The Appellant then pulled out his penis and made the Complainant fellate him (Count 7). She alleged he ejaculated into a trough[48]. The Complainant then went outside with the Appellant and commenced the circuit.[49]

28. After the boot camp, they went home in the Appellant's car. There was no conversation she could recall.[50]

29. There was no independent witness to the alleged offences.

The Third Boot Camp

30. About one week after the second series of alleged offences, the Complainant attended the third boot camp with the Appellant. Again, they left the house together at about 0400 hours.[51] No sexual activity occurred on this occasion.[52] She said she arrived with the Appellant at the same carpark at Hudson Park but it was raining. They stayed there for about ten minutes and then went to the Westfield Kotara carpark which was a multi-level carpark. They set up the boot camp on the first level of the Westfield carpark. Other people arrived ten to 15 minutes prior to the commencement of the class at 0600 hours. She participated in the boot camp and then returned home.

Complainant Leaves House

31. Shortly after this third boot camp and before Christmas the Complainant and her father moved out of the house[53]. She did not live with the Appellant

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[47] AFM p55.20-40 (Complainant).
[48] AFM p56.47 (Complainant).
[49] AFM pp55.55-57.05 (Complainant).
[50] AFM p57.25 (Complainant).
[51] AFM p57.44 (Complainant).
[52] AFM p59.10 (Complainant).
[53] AFM p100.10 [redacted] AFM p60.34-39 (Complainant).

again.[54] Accordingly, on the Crown case, the period of the alleged offences was November to December 2012.

Disclosure to Police

32. When the Complainant was about 14 or 15 years, the Complainant spoke to [redacted][55] She stated briefly:

"Sexual stuff" had happened.

33. During a second conversation between them, the Complainant says she did not disclose "the full details".[56]

34. On 29 July 2016, [redacted] became aware of the Complainant's allegations. She then had a telephone conversation with the Complainant's father to enquire about the complaint.[57]

35. The next time the Complainant says she saw the Appellant was in 2016 when she was working in a Chinese restaurant in Adamstown.

36. In October 2016 around the HSC time, the Complainant had an argument with her father. During this argument, she told her father the Appellant had sexually assaulted her. He said:

We should go to the police.

Police Complaint

37. The Complainant made a statement to the police on 20 October 2016.[58]

38. On 6 March 2017, the Appellant was arrested, with bail refused and had been

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[54] AFM p60.43 (Complainant).
[55] AFM p61.21 (Complainant).
[56] AFM p61.49-62.25 (Complainant).
[57] [redacted]
[58] AFM p64.18 (Complainant).

in custody at all times thereafter.[59] At the time of his arrest, his mobile telephone was seized by police and was not returned to him.

39. The Appellant was charged with six counts of aggravated sexual intercourse with a person aged above 10 and under 14 years contrary to s 66C(2) of the *Crimes Act 1900* (NSW) and one count of aggravated indecent assault contrary to s.61M(2) of the *Crimes Act 1900 (NSW)*.

40. The Appellant was also charged with a separate indictment of one count of break, enter and commit a serious indictable offence contrary to s 112(1)(a) of the *Crimes Act 1900* (NSW) and one count of unlawful use of a listening device contrary to s 7(1)(a) of the *Surveillance Devices Act 2007* (NSW). The CCA referred to this as the "listening device matter" and while some of the evidence overlapped, evidence was served in both the sexual assault matters and the listening device matters.[60]

41. The police performed a Cellebrite download of the contents of the Appellant's mobile telephone which was stored on a hard-drive (iPhone 6EFIMS X002614993).

42. The modern mobile telephone is the repository of a great deal of contemporaneous information including photographs, emails, text messages, telephone call records, calendar, and GPS information. Even health information and distance walked can be recorded on the mobile telephone.[61]

43. On 19 July 2017, Senior Constable Rowe prepared a statement in which he stated he performed a Cellebrite download to obtain information stored on "an exhibit". There was no reference in that statement identifying the "exhibit" as being the mobile telephone of the Appellant. The statement was served but the report was not.

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[59] CAB p88.35-.40.
[60] CAB, Court of Appeal p 110 at [15].
[61] CAB, Court of Appeal p123 [58] and p124 [61].

44. On 16 April 2018, a Statement of Facts in the sexual assault proceedings was provided by the ODPP.

45. On 3 May 2018, an index in the sexual assault matters was provided to the Appellant's legal representatives. The index identified a "hard drive containing the download of an exhibit".[62] The Cellebrite download of the Appellant's mobile telephone was served on the Appellant after his conviction.

46. The Crown did not tender the information from the Cellebrite download at trial.[63]

47. On 8 May 2018, the Office of the Department of Public Prosecutions (**ODPP**) supplied a proposed witness/exhibit list for the sexual assault trial.[64] This identified Senior Constable Michael Rowe (who had undertaken the Cellebrite download) but indicated he was not required.[65]

48. On 11 May 2018, the statement of Birchill (nee Mullens) was served.

49. Birchill was the only person who attended boot camps who gave evidence other than the Complainant. She said she used the female toilet at Hudson Park once. She said the Appellant had a key to the door of the female toilet. She gave evidence she had a conversation and the Appellant had told her he had applied to the Council to use the park and got the key to use the toilet block.[66]

50. There was no application to adjourn the proceedings or exclude her evidence pursuant to s 146 of the *Criminal Procedure Act 1986* (NSW).[67]

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[62] CAB, Court of Appeal p 110 [13] and p 116 [33].
[63] CAB, Court of Appeal p 110 [14]
[64] CAB, Court of Appeal p 110 [14].
[65] CAB, Court of Appeal p 110[14].
[66] AFM p134.45-48 (Birchill).
[67] CAB, Court of Appeal p 112 [22].

51. The Appellant's trial commenced on 14 May 2018.[68] The Appellant did not give evidence.

52. Early on the morning of Friday 18 May 2018, Mr O'Brien wrote to the ODPP seeking information as to how Birchill was identified.[69]

53. Promptly thereafter, at 0931 hours, there was the following response:

Ms Birchill's details were obtained from the Cellebrite download of Mr Edwards' phone. This office is unaware of any contact between the complainant and Ms Birchill at any stage, or even whether they know each other.[70]

54. By email at 1310 hourrs, Mr O'Brien responded:

I did not know about the download.

Sorry to be a pain but [can] you ask the OIC if I can get a copy?[71]

55. The response at 1401 hours included:

I'll make enquiries with the OIC as to whether a copy can be provided.[72]

56. On 21 May 2018, the judge summed up during the morning and the jury retired at 1225 hours.[73]

57. On 22 May 2018 at 1000 hours, the jury returned a verdict of guilty on six counts.[74]

58. On 23 May 2018, a copy of the contents of the Cellebrite download from the Appellant's mobile telephone was provided to the Appellant's solicitors.[75]

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[68] CAB, Court of Appeal p 108 [7].
[69] CAB, Court of Appeal p 114 [29].
[70] CAB, Court of Appeal p 115 [30].
[71] CAB, Court of Appeal p 115 [31].
[72] CAB, Court of Appeal p 115 [31].
[73] CAB, Court of Appeal p 116 [37].
[74] CAB, Court of Appeal p 117 [38].
[75] CAB, Court of Appeal p 116 [34] .

59. The Appellant's solicitor observed there were in excess of 60,000 files, including in excess of 20,000 text messages.[76]

Part V: LEGAL PRINCIPLES

60. The appeal must be considered in the light of s 6(1) *Criminal Appeal Act 1912* (NSW) in which the verdict can be set aside in the event of a miscarriage of justice. The Appellant submits there has been a substantial miscarriage.[77]

61. The failure to disclose information, documents or things relevant to credibility or reliability of witnesses may give rise to a miscarriage of justice.[78]

62. In certain circumstances, the prosecution has an obligation to make enquiries[79] including the criminal history of prosecution witnesses.[80] If the prosecution is asserting that a witness is independent, then it owes the obligation to identify whether there is any prior relationships between the witnesses.

63. There are two obligations to disclose information that may be relevant to the prosecution of the defence:

    (a) The first by the police to the ODPP under the Directors Act s 15A; and

    (b) By the ODPP to the accused under s 141 and s 142 of the CP Act.

64. There are broadly equivalent statutory provisions in the other States and Territories of Australia.[81]

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[76] CAB, Court of Appeal p 116 [34].
[77] *Wilde v The Queen* (1988) 164 CLR 365 per Brennan, Dawson and Toohey JJ at 317-372, *Mraz v The Queen* (1955) 93 CLR 493; *R v Storey* (1978) 140 CLR 364 per Barwick CJ at 376.
[78] *R v Brown (Winston)* [1997] UKHL 33; [1998] AC 367 per Lord Hope of Craighead at p 377, see also *Mallard* per Kirby J at [81]; *Grey v The Queen* [2001] HCA 65; *Eastern v Director of Public Prosecutions (No 13)* [2016] ACTCA 65 at [336] but cf *R v Spiteri* [2004] NSWCCA 31; (2004) 61 NSWLR 369.
[79] See *AJ v The Queen* [2011] VSCA 215; (2011) VR 614 at [22], *R v Keogh (No 2)* [2015] SASC 180 at [63].
[80] *R v Garafolo* [2999] 2 VR 625 at [70].
[81] *Public Prosecutions Act 1994* (Vic) s 27; *Director of Public Prosecutions Act 1991* (SA) s 10A; Director of Public Prosecutions (ACT) Guideline established under s 12(1)(a) *Director of Public Prosecutions*

65. Under the first, police are obliged to provide to the Director any "*information, document or thing*" that might be reasonably expected to assist the Crown case or the case of the defence.

66. The character of material to be disclosed was identified by Hodgson JA in *R v Reardon(No2)*[82]. The material to be disclosed need not be admissible in evidence but may provide a "lead" on an issue in the case or a new issue that is not readily apparent from the material already served.

67. Section 15A of the Directors Act is framed in terms of an obligation of "disclosure". As a matter of simple English expression, the concept of "disclosure" incorporates the need of the police to provide the "information, document or thing" reasonably expected to assist the Crown case or the case of the defence rather than advising of its existence. So much is made clear by the terms of s 15A(6) and (7). The common law was not abrogated by the terms of s 15A obligation of disclosure.

68. The ODPP had the mandatory statutory obligation to prepare the information, document or thing for service documents in the prosecutor notice under s 142 Directors Act. The prosecutor is to provide the "prosecutor's notice" which is to "contain" the nominated documents. The clear words of the statute require provision of the information, documents or things.

Part VI: ARGUMENT

69. Given the prevalent use of the mobile telephone and the information it stores, there would be a strong presumption a Cellebrite download would be served, for what it recorded and what it did not record.[83]

Act 1990 (ACT); *Director of Public Prosecutions Act 1984* (Qld) s 24C; *Director of Public Prosecutions Act 1991* (WA) s 22.

[82] [2004] NSWCCA 197; (2004) 60 NSWLR 454 AT [48].

[83] In this regard, its forensic importance is more important than police "running sheets" or other documents generated by police during the course of their investigations. Cf see *R v Reardon (No 2)* (2004) 60 NSWLR 454; [2004] at [95] and [96] but cf Hodgson at [59]

70. In any event, the police have a statutory obligation to consider whether the information contained within the Cellebrite download requires provision to the ODPP. For this purpose, they have to make an assessment as against the statutory test. This is a prospective assessment and has a low threshold. Material that may provide a 'lead' on a fact in issue in the case or a new issue that is not apparent from the prosecution case needs to be disclosed. The absence of communication can be forensically important. In this case, Police formed the relevant opinion sufficient to provide the Appellant's Cellebrite download to the ODPP under the Directors Act.

10 71. The ODPP have a separate mandatory statutory obligation under s 141 and s 142 CP Act.

72. The s 142 notice did not "contain" the Cellebrite download. The contents of the Appellant's Cellebrite download were not actually provided to the Appellant until 23 May 2018 – after the verdict.[84] The Appellant submits this failure was in breach of the obligation to disclose by the ODPP.

73. The Court of Criminal Appeal proceeded on the basis the disclosure of the fact of the Cellebrite download was sufficient disclosure of the "*information, document or thing*" contained within the Cellebrite download for the purpose of ss 141 and 142 of the CP Act.[85]

20 74. The Appellant submits this conclusion is wrong. The Court of Appeal decision does not accord with the statutory purpose of the provisions or common law rules. It stands as binding authority for the time being unless overturned.

75. Because of the existence of the statutory provisions, there is a presumption that "*information, documents or things*" that do not assist either the prosecution or the defence, not be served under either Act or at common law. Accordingly, the disclosure of the existence of the Cellebrite download and the subsequent

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[84] See CAB, Court of Appeal p116 [34].
[85] See CAB, Court of Appeal p110 [13]; p119 [47], p120 [50] and [51]; p124 [60] and [61].

failure to serve a s 142 notice "containing" the actual "*information, document or thing*" (ie its contents) is a representation that the contents are not reasonably regarded as relevant. As such, in this case, the disclosure that was made was incomplete and misleading and apt to mislead.

76. In this case, the postulated obligation to interrogate suggested by the Court of Appeal is a false issue given the police properly disclosed under the Directors Act. Inferentially, the ODPP formed the same view but only disclosed the existence of the material, not the "*information, document or thing*". The police and the ODPP have to interrogate to form a conclusion in discharge of the statutory function to disclose. They cannot turn a blind eye to that obligation. They must engage with the material. But they do not have to provide an advice on evidence to a defendant.

77. Once the "*information, document or thing*" has been served, it is a matter for the defence as to what to do with the material. Once the duty of disclosure has been discharged, the further investigation and preparation of the defence is a matter for the defence.[86]

78. Further, the Cellebrite download actually proved relevant to the Crown case. It was deployed to identify a witness in the Crown case. On that basis alone the content of the Cellebrite download required disclosure under the CP Act and at common law before the trial started.

79. To frame the forensic importance of the Cellebrite download only as to the identification of witnesses is incorrect.[87] There is other material with the Cellebrite download that may be directly or indirectly relevant to a fact in issue including telephone contacts, GPS information, text messages, calendar entries. That information can place the accused on a course of inquiry that

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[86] See *R v Brown* (Winston) per Lord Hope pp 379-380, followed in *Costa v State of Western Australia* [2019] WASCA 200 at [25].

[87] See CAB, Court of Appeal p124 [61].

reveals further information of relevance. The absence of evidence on the download is relevant.

80. The Appellant was deprived of the possibility of a fair trial.

81. The Appellant's Cellebrite download:

(a) Preserved records from the period of the alleged offences until the date of arrest;

(b) Demonstrated no text or SMS message was sent by the Appellant to the Complainant using this mobile telephone, nor any telephone call to her;

(c) On the calendar, demonstrated that in July 2013, a person with the same first name as the Complainant was training the Complainant which media searches establish was one week prior to a State hockey intensive training camp at which the Complainant was attending;

(d) Demonstrated that in 2014, a contact had been generated for the first time with the Complainant's number in it which indicates ongoing communication between them.

82. The Appellant:

(a) Was deprived of identifying his other clients in the relevant period who could give evidence of the training venue, ie Alder Park;

(b) Was unable to lead evidence of the absence of the alleged text message on the Appellant's mobile telephone from the Appellant to the Complainant in 2012 in which she says he told her to delete the internet history or any other text message;

(c) Was unable to obtain expert evidence with respect to what was demonstrated on the Cellebrite download;

(d) Was unable to arrange a further expert examination of his mobile

telephone using an alternative computer program that may have revealed further information;

(e) Was constrained in his defence due to the constraint on his counsel in cross-examination because he was not aware the electronic records that may have established a particular defensive position;

(f) Lost a real opportunity to challenge the Complainant and Birchill on any relationship or knowledge they had of each other prior to the trial which may have affected credibility or reliability of the evidence of either;

(g) Was unable to seek a warning or direction from the trial judge to the jury pursuant to s 165 *Evidence Act 1995* (NSW);

(h) Was unable to cross-examine the Complainant on her training with him in July 2013 revealed by the calendar entry;

(i) Was precluded from identifying other witnesses from his mobile telephone contact list, bearing in mind that each class had 6-8 participants.

83. The Appellant's solicitors would have been able to undertake social media searches in the name of Birchill and been able to cross-examine on that material.

84. The Cellebrite download demonstrated there were no text messages sent to her by the Appellant in 2012 or 2013 as asserted at trial, or telephone communications. There was no expert evidence to establish that deleted texts would not have been recoverable from the deleted texts folder.

Part VII: ORDERS SOUGHT

85. The Appellant seeks the following orders:

(a) Appeal allowed.

(b) Set aside orders 1 and 2 of the Court of Criminal Appeal.

(c) Quash the verdict of the jury on 22 May 2018.

(d) Substitute verdicts of acquittal for each of the charges before the District Court.

(e) In the alternative to order (d), matter remitted to the District Court of New South Wales for retrial.

10 (f) Appellant granted conditional release.

(g) Respondent to pay the Appellant's costs of this appeal.

Part VIII: TIME ESTIMATE

86. The Appellant estimates his oral argument would take between one and one-and-a-half hours.

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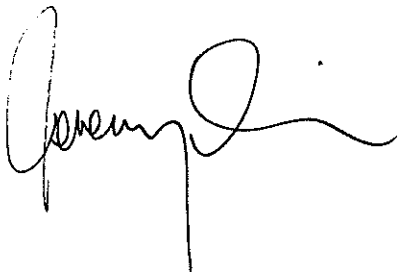
Dated: 4 February 2021



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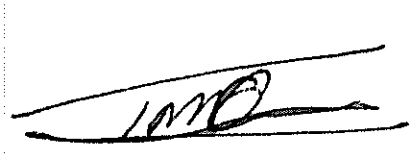

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL

OF THE SUPREME COURT OF NEW SOUTH WALES

10 BETWEEN:

SCOTT EDWARDS
Appellant

and

THE QUEEN
Respondent

ANNEXURE

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LIST OF RELEVANT STATUTORY PROVISIONS

1. *Criminal Procedure Act 1986* (NSW) No 209 ss141, 142
2. *Director of Public Prosecutions Act 1986* (NSW) No 207 s15A
3. *Evidence Act 1995* (NSW) No 25 s165