6 October 2021

SCOTT EDWARDS v THE QUEEN

[2021] HCA 28

Today the High Court unanimously dismissed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales. The appeal concerned whether the verdict at trial was affected by a miscarriage of justice within the meaning of s 6(1) of the *Criminal Appeal Act 1912* (NSW) in that the prosecution did not provide "full and proper" disclosure of certain data to the appellant prior to trial, contrary to the requirements of ss 141 and 142 of the *Criminal Procedure Act 1986* (NSW) ("the Act").

The appellant was convicted by a jury of six counts of aggravated sexual intercourse with a person aged above 10 and under 14 years of age, contrary to s 66C(2) of the *Crimes Act 1900* (NSW). The appellant contended that the trial miscarried by reason of the prosecution's failure to provide to his lawyers, in advance of the trial, a hard drive containing a copy of data stored on the appellant's mobile phone ("the Cellebrite Download"), which had been seized by police upon his arrest. The Office of the Director of Public Prosecutions ("the ODPP") informed the appellant's lawyers of the existence of the Cellebrite Download in writing on three occasions prior to the trial but did not serve a copy of the Cellebrite Download or otherwise provide any information from the Cellebrite Download. The appellant's lawyers only became cognisant of the Cellebrite Download after the ODPP served a witness statement on the Friday before the trial was scheduled to commence.

The High Court unanimously held that in this case the verdict was not affected by a miscarriage of justice and dismissed the appeal. The majority of the High Court found that there was no prosecutorial duty to disclose a copy of the Cellebrite Download because the appellant, even with the benefit of hindsight, was unable to show how the contents of the Cellebrite Download "would reasonably be regarded as relevant to the prosecution case or the defence case" as required by s 142(1)(i) of the Act or were "relevant to the reliability ... of a prosecution witness" as required by s 142(1)(k) of the Act. The majority found that the appellant's arguments about the forensic value of the Cellebrite Download did not rise above the level of speculation.

In any event, the appellant was unable to show any respect in which his entitlement to a fair trial was adversely affected by not being provided with a copy of the Cellebrite Download. The High Court rejected the appellant's argument that, without the Cellebrite Download, he had lost the chance of a different outcome at trial that might have resulted from further investigations, cross‑examination and submissions.

* *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court’s reasons.*