



HIGH COURT OF AUSTRALIA

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.*