



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 19 May 2021 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S235/2020
File Title: Edwards v. The Queen
Registry: Sydney
Document filed: Form 27F - Outline of oral argument
Filing party: Appellant
Date filed: 19 May 2021

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

**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 OUTLINE OF ORAL ARGUMENT

Part I: CERTIFICATION

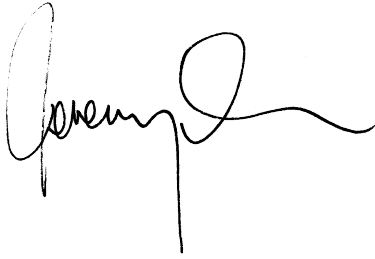
1. The Appellant certifies that this outline is in a form suitable for publication on the internet.

Part II: PROPOSITIONS TO BE ADVANCED

1. Section 142 of the Criminal Procedure Act 1986 (NSW) (CP Act) required disclosure of the Celebrite download NOT simply acknowledgement of its existence.
 - (a) The statute is in mandatory terms in that the notice must "contain" the relevant information;
 - (b) To suggest otherwise is to introduce a discretion within the Director's office under s141 and s142 CP Act that would undermine the statutory purpose of the disclosure obligation and lead to unfairness;

- (c) While the office of the DPP does not have to sift through the material to identify information that might be helpful to the defence, it is obligated to read it sufficiently to determine its relevance to discharge its statutory obligation of disclosure;
 - (d) The Cellebrite download of a mobile telephone of the accused should be presumed to be relevant if there is any suggestion of electronic communication between the accused and the complainant temporally relevant to the alleged offending or otherwise;
 - (e) As a matter of fact the Prosecutor utilised the Cellebrite download to identify a potential witness (Birchill) and thereby had an unfair advantage over the Defence.
2. The Appellant lost a real chance of a different outcome for the following reasons:
- (a) The Appellant's mobile did not record a text or other message to the Complainant as she alleged. This was a potential avenue for further investigation prior to trial and cross-examination and submission to the jury;
 - (b) The information would have identified the change of name of the independent witness Lynn Birchill/Mullen and enabled further investigations prior to trial and cross-examination and submission to the jury regarding the opportunity of pollution of evidence due to pre-existing relationships and may have precluded the Crown from submitting that Birchill was an independent witness.

Dated: 18 May 2021



Jeremy Morris SC
13th Floor St James' Hall
169 Phillip Street
SYDNEY NSW 2000
Tel: (02) 9335.3040
Fax: (02) 9335.3099
Jeremymorris@stjames.net.au



Terry Ower
4th Floor Wentworth Chambers
180 Phillip Street
Sydney NSW 2000
Ph: (02) 9232.2722
tower@4wentworth.com.au



Eamonn O'Neill
Maurice Byers Chambers
Level 60, MLC Centre
19 -29 Martin Place
Sydney NSW 2000
Ph: (02) 8233 0376
e.oneill@mauricebyers.com