HIGH COURT OF AUSTRALIA

Public Information Officer

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MATTHEW DAVID BOUNDS v THE QUEEN

A man convicted of offences related to downloading child pornography and obscene material at a university computer laboratory had suffered no substantial miscarriage of justice by one of the charges mistakenly being put to a jury trial, the High Court of Australia held today.

Mr Bounds was charged with possessing child pornography and possessing indecent or obscene articles, both in the form of computer data, on 28 July 2001, at Esperance in Western Australia. Mr Bounds was a student at Curtin University which operated a computer laboratory at Esperance Community College. Curtin University students could access the laboratory after hours by using a swipe card and a personal identification number. While checking the files of students storing large amounts of data, the university's system administrator found 105 child pornography images and 11 other indecent or obscene images on Mr Bounds's personal computer directory. Some were downloaded during the night. The first count alleged a crime under the WA *Censorship Act* and so was an indictable offence. The second count alleged a "simple offence" under the Act. On 28 May 2003 in the WA District Court, Mr Bounds was presented on an indictment for both offences. He denied storing the material and claimed someone else had learned or guessed his password. Mr Bounds said a chatroom acquaintance in Canada had sent him material which he had not looked at and which he thought was pictures of the band Metallica which they had been discussing. He was found guilty and given a suspended sentence of 24 months' jail on each count.

Mr Bounds appealed to the WA Court of Criminal Appeal on various grounds, including that the conviction and sentence on count 2 should be quashed because the offence should not have been tried on indictment. He alleged that the jury's verdict on count 1 was unsafe and unsatisfactory as evidence concerning count 2 was wrongly put before the jury. The CCA unanimously quashed the conviction on count 2 as the offence was not triable on indictment, but, by majority, it held that admission of evidence on count 2 had caused no substantial miscarriage of justice in relation to count 1. Mr Bounds appealed to the High Court, contending that the jury had before it evidence related to count 2 which, but for both counts being on the indictment, would not have been admissible in a trial on count 1.

The Court, by a 4-1 majority, dismissed the appeal. It held that the case against Mr Bounds was overwhelming. No other person was identified who could have stored the images in his personal directory. Mr Bounds accepted he was in the computer laboratory, often alone and out of hours, when they were downloaded. The Court held there was no substantial miscarriage of justice.

- *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.*

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