

IN THE FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL

No. NSD 103 of 2023

**BRUCE LEHRMANN**  
Applicant

FEDERAL COURT OF AUSTRALIA  
Judge: Lee J Date:  
Lehrmann v Network Ten  
File No. NSD103/2023

EXHIBIT/MFI:

67

Description: \_\_\_\_\_  
Return to: \_\_\_\_\_  
(party/non-party, if produced on subpoena)  
Associate: \_\_\_\_\_

**NETWORK TEN PTY LTD and another**  
Respondents

### Agreed Facts

The following are agreed facts for the purposes of this proceeding pursuant to s 191(1) of the *Evidence Act 1995* (Cth):

#### **Impact of trauma and alcohol on memory**

1. Trauma has a severe impact on memory by splintering and fragmenting memories; disconnecting memories such that semantic or meaning elements become separated from emotion; and interfering with the timespan that memories require to consolidate and become permanent. Due to the potential for cuing of emotional responses to fragmented memories, memory can change, be subject to reconsolidation effects, and even when these effects are not marked initially, memories may remain labile for some time. Thus, changes in what the person reports as their memory of an event can be expected. Further, lack of clarity and confused accounts can be expected until such time as the memory has consolidated. How long it may take for memories to stabilise after a severe trauma is not easily identified. Not all people who experience a severe trauma experience post-traumatic stress disorder (PTSD), but women are more likely to experience PTSD than males, and sexual assault is a well-known precursor for PTSD.
2. Inconsistencies in report following a traumatic event is often observed and explicable through underlying theories of trauma and memory function. Omissions can be understood as alterations in awareness due to high arousal at the time of the event that consolidate over time. As the English Prosecution Service reported, inconsistency is often observed in reliable reports of sexual assault and is not ipso facto a measure of deception. In understanding the account of a survivor, a person must consider how that account was elicited. This includes the skill and attitudes towards the person by the investigating officers; the time elapsed between the traumatic event and the formal interview; and the psychological/emotional state of the person being interviewed at the

time of interview. It is important to note that the first forensic interview is potentially a trigger for intrusive thoughts that can lead to fragmentation of memory and dissociation. Patterns of behaviour such as high confidence and clarity in the account are not helpful in determining whether the account is accurate. Despite the belief that the emergence of inconsistencies across interviews is a sign of lying (people "can't keep their story straight") the aforementioned review of literature on memory, impacts of trauma and the dynamic between interviewee and the interviewer must be considered. Despite beliefs otherwise, police officers (and other professionals) are no better than ordinary civilians in detecting lying but have greater confidence in their beliefs. Overall, multiple interviews are typically necessary to construct a clear narrative of events. However, the consequence of these multiple interviews may be patterns of inconsistency or omissions especially early in the interview process. These need to be carefully evaluated but are not in and of themselves necessarily indicative of deception or accuracy.

3. Acute alcohol intoxication has a significant and negative effect on memory. It can impair the memory for behaviour and motivation of all parties involved in a sexual act, including a sexually aggressive act. In addition, acute alcohol intoxication has been shown to impair judgement, impact negatively on executive function, and impair attention to environmental cues. It can lead to fragmentary memories that slowly recover and consolidate. From a forensic perspective, this process of fragmentation of memory with at times slow recovery may lead to apparent inconsistency and omissions between interviews.

#### **Metadata**

4. When photographs are uploaded or shared on third party platforms, including WhatsApp, iCloud or Google Drive, the metadata for such photographs (including the date and time that the photograph was taken) may be removed by that platform.
5. When the photograph in question was examined by the forensic expert retained for the criminal trial, Peter Reid, he found "there was no metadata that indicated the date and time that that photograph was taken."
6. The photograph in the photo reel in Angus Llewellyn's phone has no metadata attached to it.
7. The time and date on which the original photograph in question was taken cannot be ascertained from the digital version of the photograph in Mr Llewellyn's phone.

8. The time and date on the digital version of the photograph in Mr Llewellyn's phone is not the time it was received by him.



# TRANSCRIPT OF PROCEEDINGS



Email: [actcourts@epiqglobal.com](mailto:actcourts@epiqglobal.com)

Web: [www.epiqglobal.com](http://www.epiqglobal.com)

Adelaide | Brisbane | Canberra | Darwin | Melbourne | Perth | Sydney | Alice Springs

---

Copyright in this document is reserved to the Australian Capital Territory. Reproduction of this document (or part thereof, in any format) except with the prior written consent of the attorney-general is prohibited. Please note that under section 43 of the Copyright Act 1968 copyright is not infringed by anything reproduced for the purposes of a judicial proceeding or of a report of a judicial proceeding.

## **SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY**

### **THE HONOURABLE CHIEF JUSTICE MCCALLUM AND A JURY OF SIXTEEN**

**SCC 264 of 2021**

**DAY 9**

**DIRECTOR OF PUBLIC PROSECUTIONS  
and  
BRUCE LEHRMANN**

**CANBERRA**

**10.00 AM, MONDAY, 17 OCTOBER 2022**

MR S. DRUMGOLD SC with MS S. JEROME appeared on behalf of the Office of the Director of Public Prosecutions.

MR S. WHYBROW with MS K. MUSGROVE and MR B. JULLIENNE appeared on behalf of the Accused.

[REDACTED]

---



HER HONOUR: Yes, Madam Prosecutor.

5 MS JEROME: I call Peter Reid.

<PETER JOHN REID, Affirmed: [10.20 am]

10

<EXAMINATION-IN-CHIEF BY MS JEROME

15

HER HONOUR: Thank you. Take a seat, please, sir. Yes, Madam Prosecutor.

20

MS JEROME: Thank you. Can you please state your name and occupation?---My name's Peter Reid and I am a digital forensic examiner with the Australian Federal Police.

25

What are your qualifications?---I hold a degree in digital forensics from Edith Cowan University and a certificate of cyber-security or computer security from Edith Cowan also and I've undertaken a number of training courses in phone extractions and computer extractions through industry vendors over the years.

The phone extraction training, does that involve the use of Cellebrite reports?---Yes, it does.

30

You have completed many phone extractions which produce the Cellebrite reports?---I have. I couldn't put a number on it but it'd be in the many hundreds, if not more.

35

On 26 May 2021 at about 9.40 am were you provided a mobile phone which belonged to Brittany Higgins?---Yes, I was.

That was a Apple iPhone?---That's correct.

40

You performed an extraction of that phone?---I did.

With her consent, as you understand?---Yes.

45

Can you tell the jury, please, what the process you used and what information you obtained in that phone?---The software I used connects to the phone. I unlock the phone with the PIN number that was provided and the software downloads all the content of the mobile phone and it stores on a hard drive that I had with me. I then generate a report of all that data. It shows the





calls, the messages, chats and all that. Once that extraction is completed I then provide that information to the case officer and then they look through all that information and identify what they deem to be of interest to the investigation. Do you want me to – I can go on. Once they have identified that information they then ask me to produce a report of that information. They may request specifics about certain items on the phone, calls, chats or photographs, and I might provide further information relating to those individual items that are identified to me. Once that's all complete I then produce a report back to the case officer which subsequently gets tendered in court with my statement.

In relation to this particular phone of Brittany Higgins, was the date and time settings correct?---Yes, they were.

When you completed the copy of the phone, did you check that it was a complete copy?---To the best of my ability using the software, yes. I'd have to say we don't know what we don't know but the software downloads as much as it is able to download, yes.

Are you able to extract deleted items?---In some instances we are.

Can you explain to the jury in what instances you are able to?---It more pertains to SMS or messages, if you like. When a message is deleted by the user of the phone, that deleted message will – fragments of that deleted message will sometimes stay in the phone for a period of time and the phone's operating system may re-use that storage location at a later date and overwrite it with other information. When we undertake the extraction, it will sometimes provide us with deleted information but the longer time goes on, the less likely that those deleted items will appear in a phone.

Is that because they'll be replaced by more recent deleted items?---By more recent items and it can be any particular item. Doesn't necessarily need to be another message. It can be just – the phone requires storage of something and it will overwrite those locations.

Now your extraction was completed by about 12.10 pm that day?---Yes.

Then you returned that phone to Ms Higgins?---Yes, I did.

Did you then upload the copy of that phone to a police software system?---A police network that facilitated the ability for the case officer, Senior Constable Frizzell, to review that from her work location, yes.

Can I just ask, because the time and date was set correctly on the phone, in regards to the Cellebrite report that was produced, so the date and timestamp is also in ACT time?---Yes, yes, that's correct.



Now on 22 July 2021, did you attempt to extract data on two additional phones belonging to Ms Higgins?---Yes, I did.

5 Were you able to extract any information from either phone?---No, I was not, no. The PIN numbers provided for those two phones were unsuccessful and I was not able to extract any data from those phones.

10 Was there also a faulty cable in regards to one of them that prevented - - -?---A faulty charge cable from recollection, yes.

I see, okay. On 27 July 2021 did you access the Google account belonging to Ms Higgins?---I did.

15 Did you access images of a leg on the Google account?---Yes.

Your Honour, may this witness please be shown Exhibit F. It is electronic I am being told, my apologies. I will arrange for it to be put on the screen. Has that come up on your screen?---Yes, that's the image.

20 Is that the photo that – or is that the image that you saw on the Google account?---That image was identified to me and I did subsequently see that image on the Google Drive account, yes.

25 Now when you saw it on the Google account were you able to determine the date when it was originally taken?---No, I was not.

30 Can you tell the jury why?---When a photograph is taken on some devices and mobile phones the mobile phone in this instance will record information within the photograph data of when that photograph was taken and sometimes the location of where that photograph was taken. However, when images are uploaded or shared on platforms - - -

Such as?---such as WhatsApp or Google Drive or iCloud or Instagram - - -

35 Or a Google account?---Or a Google account, the metadata, which is what that information is called, is actually removed by the platform, Google Drive, therefore when I reviewed the metadata within that image there was no metadata that indicated the date and time that that photograph was taken.

40 Is it correct that on the – on Ms Higgins' Google account there were actually two photographs of this same image electronically?---Yes, yes.

Did you examine both electronic photo?---Yes, I did, yes.

45 Were you able – was the metadata lacking in both photographs?---In both, both images, yes. There was none in either.



Thank you. No further questions.

HER HONOUR: Mr Whybrow.

5

**<CROSS-EXAMINATION BY MR WHYBROW**

**[10.28 am]**

10 MR WHYBROW: Sir, in relation to – you gave some evidence about deleted items?---Yes.

Are you referring to a user potentially deleting a thread or a contact from their phone?---Yes.

15 That is – sorry, I withdraw that. The Cellebrite extraction is designed to get everything that you can off that phone - - -?---Yes.

- - - at the time that you do the extraction?---Yes.

20 It might contain deleted items where the operating system has not re-used the memory?---That's correct.

25 Now in this case you also got a whole lot of data in terms of photographs, contacts, images, websites, et cetera?---That's correct.

It was in the order of about 8,000 photographs that you – were on the phone, or thereabouts. Is that correct?---Yes, thereabouts.

30 The photograph that you were just shown, Exhibit F, that had been flagged for you as an item of interest to look for in the Cellebrite data?---Yes.

It is the case that you did not find that photograph, as far as you could find, in those 8,000 odd images?---No, I couldn't.

35 You only found it on a iCloud or a Google Drive?---Yes, it was only the Google Drive from recollection.

40 You have undertaken a search of all of that data for the word 'bruise'?---I have.

That includes against all the text messages, emails or anything that has been downloaded?---Yes, the entire contents of the phone.

45 And is it the case that apart from one message with Mr Dillaway about him falling off a bike, there is no reference to any bruise until about February 2021?---That is correct.



And then it is a reference in a chat between Ms Higgins, her partner and Lisa Wilkinson?---Yes. I'm not sure if Lisa Wilkinson – I didn't identify the third party. It had an obscure - - -

5 Okay?--- - - - handle.

But it was a - - -?---But it was a third person, yes.

I apologise. I will withdraw that - - -?---Yes.

10

- - - and say you didn't see any reference to the word bruise other than that message to Mr Dillaway or from Mr Dillaway?---Yes, that's correct.

Prior to February 2021?---That is correct.

15

And in relation to two particular contacts, an Alex Woods and an Alex Humphreys, did you find any messages between the owner of the phone and those individuals or those persons?---No, I did not.

20

Thank you.

They're my questions, your Honour.

HER HONOUR: Any re-examination?

25

MS JEROME: No. Thank you, your Honour.

HER HONOUR: Mr Reid, thank you so much for coming to give evidence?---Thank you.

30

You are excused.

<WITNESS WITHDREW

[10.31 am]

35

HER HONOUR: Yes, Mr Prosecutor.

MR DRUMGOLD: Thank you, your Honour. We call Michaelia Cash. I think she is – she is remote, your Honour.

40

HER HONOUR: Ms Cash, can you hear us now?

MS CASH: I can hear you. Thank you very much.

45

