

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

No. NSD 103 of 2023

BRUCE LEHRMANN

Applicant

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):

Exhibits in Mr Lehrmann's criminal trial

1. On 26 May 2021, the Australian Federal Police (**AFP**) performed a Cellebrite extraction of Brittany Higgins' mobile phone (**Cellebrite extraction**) comprising some 56,287 pages and included all text messages that were on Ms Higgins phone at that time.
2. Included in the AFP ebrief were a series of separate pdf files in which text exchanges between Ms Higgins and identified individuals were extracted.
3. One of those pdf files comprised 2,312 pages of text messages between Ms Higgins and Benjamin Dillaway (**Dillaway Messages**).
4. Separate pdf files comprised messages between Ms Higgins and Peter FitzSimons (and in some cases other people) (**FitzSimons messages**).
5. The Cellebrite extraction, the Dillaway Messages and the FitzSimons Messages were included in the AFP eBrief which was disclosed to the Applicant's legal representatives during his criminal proceedings in the ACT Supreme Court by the ACT Office of the Director of Public Prosecutions in accordance with the prosecutor's duty of disclosure.
6. During Mr Lehrmann's criminal trial in the ACT Supreme Court:
 - a. 17 pages from the Dillaway Messages was tendered as Exhibit H;
 - b. no other pages from the Dillaway Messages were tendered; and
 - c. the content of those pages which were not tendered as Exhibit H was not otherwise revealed.

7. Pages 20–2,331 of the confidential exhibit marked "TA-1" to the affidavit of Taylor Auerbach sworn 30 March 2024 is identical to the pdf file of the Dillaway Messages served as part of the eBrief.
8. During Mr Lehrmann's criminal trial in the ACT Supreme Court:
 - a. The FitzSimons Messages were not tendered; but
 - b. evidence was given by Ms Higgins to the effect that she had exchanged text messages with Mr FitzSimons relating to a book deal.
9. Pages 2,332–2,347 of the confidential exhibit marked "TA-1" to the affidavit of Taylor Auerbach sworn 30 March 2024, Annexure F to the affidavit of Taylor Auerbach sworn on 31 March 2024 and parts of Annexure H to the affidavit of Taylor Auerbach sworn on 2 April 2024 contain some of the FitzSimons Messages.