

Exhibit 151

From: Jerome, Skye [REDACTED]
Sent: Monday, 4 October 2021 9:36 AM
To: Drumgold, Shane; Priestly, Erin
Subject: R v LERHMAN
Attachments: Consent & Tendency Consideration.docx

Good morning Shane and Erin

I have written some thoughts down regarding consent and potential tendency evidence.

I hope we can discuss it further.

Kind regards

Skye



Skye Jerome
Crown Advocate
Office of the Director of Public Prosecutions (ACT)
[REDACTED]
T: [REDACTED]
E: [REDACTED]
W: www.dpp.act.gov.au

For a full range of victims rights, please go to www.dpp.act.gov.au and follow the Witnesses and Victims link.



**We acknowledge the Traditional Custodians of the ACT, the Ngunnawal people
We acknowledge and respect their continuing culture and the contribution they make
to the life of this city and this region**

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R v LEHRMANN

Consideration of Consent and Tendency Evidence

Consent

The complainant states that she was asleep/passed out at the time of penile/vaginal penetration. Therefore, she was incapable of providing consent freely and voluntarily at the point of penetration. When the complainant awoke, mid rape, she repeated her verbal rejection of the act by saying the word 'No' at least half a dozen times and was crying.¹ Despite this obvious verbal and physical rejection, the defendant persisted with the penile/vaginal penetration.

1. Does the evidence establish that consent was negated by either s67(1)(e) or (i)?

My initial reaction is no. My understanding of s67(1)(e) Crimes Act 1900 is applicable in cases where the complainant has complied with the sexual acts due to the effects of intoxication. This is not the case here.

I think we should run a simple 'no consent' case, especially given the defendant has locked himself into the version that no sexual intercourse took place. There is no evidence about the lead up to the physical interaction between the pair on the couch. The only evidence is that the complainant passed out/fell asleep and woke up moments later. Further, there is limited evidence about the extent of the complainant's intoxication. The test as I understand it, requires that there be a causal connection between the circumstance and the complainant's consent must be **sufficiently substantial** to warrant the attribution of criminal responsibility.² Evidence of the complainant's intoxication includes the complainant recalling being the drunkest that she has ever been; the complainant fell over at 88 Mile Bar; the defendant and ██████████ recall the complainant being intoxicated. Security Guard ██████████ observed her to be intoxicated and not able to put her shoes on. Security Guard ██████████ observed her to be only slightly intoxicated. There is also the footage of the complainant walking in, unassisted to Minister Reynold's office. Whilst, the footage does depict a person who is intoxicated (ie. The complainant struggles to put shoes on and stand still) it does not obviously depict gross intoxication.

Section 67(1)(i) Crimes Act 1900 is not appropriate for the same reasons as above. Our case is that there was no consent at the time of penetration.

Tendency Evidence - s97 Evidence Act

TENDENCY: *The defendant had a sexual interest in Brittany Higgins and acted on that sexual interest by engaging in sexual activity with Brittany Higgins.*

This tendency is made up of the following incidents:

¹ EICI #1 HIGGINS QA 36.

² *Gillard v The Queen* [2014] HCA 16; 88 ALJR 606.

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Incident 1 – Defendant attempted to kiss the complainant.³ This is alleged to have occurred approximately 1 week of meeting each other at the Kingston Hotel and only a few weeks prior to the alleged rape.

Incident 2 – Defendant kissed the complainant at 88 Mile Bar in the hour/s of the alleged rape. [REDACTED] witnessed the pair kissing at 88 Mile Bar.

Much will depend on the nature of the tendency said to be shown. The High Court has accepted that evidence that an accused had a sexual interest in a particular person might be significantly probative of an allegation that he committed a sexual offence against that person but not all probative that he committed a sexual offence against someone other than that person.⁴ In *TL v The Queen* [2020] NSWCCA 265, a case where it was alleged the defendant had murdered a young child, Hoeben CJ at CL (Bellow J agreeing) it was emphasised at [215] the fact that the tendency evidence involved an assault on the same victim. In those circumstances, the fact that the earlier assault was not closely similar to the alleged murder did not preclude a finding that the evidence had significant probative value, particularly in circumstances where the number of potential offenders was small. The fact that there was only a single event relied upon as tendency evidence did not preclude the evidence having significant probative value.⁵

It is necessary to identify with some precision what the crown proposes to establish by the evidence.⁶ In assessing the probative value of the evidence, the focus must be on:

- 1) The strength of the inference that can be drawn from the conduct to the tendency of the person to have a particular state of mind or to act in a particular way at the relevant time.⁷
- 2) The extent to which that tendency increases the likelihood that a fact in issue did, or did not occur.⁸

In respect to (1) : we would argue that the defendant had a sexual interest in the complainant and acted on his sexual interest, despite having a girlfriend at the time.

In respect to (2) : we would argue that the defendant acted on his sexual interest in the complainant on the 23 March 2019. Therefore, this tendency helps establish that the defendant did the act – penetrated the complainant’s vagina with his penis. This is powerful evidence in a case where the defendant claims the sexual intercourse did not occur and in his interview distances himself from the complainant at all times (over the month long period that they knew each other).

There is another potential incident:

Incident 3 – Defendant commented to [REDACTED] that the complainant was good looking. This is alleged to have occurred after the swearing in ceremony and only a few weeks prior to the alleged rape.

We would have to rethink the tendency if we added this as an incident.

I am keen to discuss all of the above further.

Kind regards Skye

³ EICI #2 HIGGINS QA 276 – 285.

⁴ *R v Bauer* (2018) 266 CLR 56.

⁵ *TL v The Queen* [2020] NSWCCA 265 at 224.

⁶ *Hughes v The Queen* (2017)263 CLR 338.

⁷ *Ibid*

⁸ *Jacara Pty Ltd v Perpetual Trustees WA Ltd* (2000) 106 FCR 51.

Exhibit 152

From: Jerome, Skye [REDACTED]
Sent: Tuesday, 17 May 2022 1:48 PM
To: [REDACTED] Callum
Subject: RE: LEHRMANN [SEC=OFFICIAL]

Hi Callum

Thanks for following this up. I am sure that the Hard drive had several more folders of APH CCTV. From memory, the footage Shane and I have seen were in subfolders.

I will also ask [REDACTED] as he mentions footage of the pair arriving on the street at APH.

Kind regards

Skye



Skye Jerome
Crown Advocate
Office of the Director of Public Prosecutions (ACT)
[REDACTED]
T: [REDACTED]
E: [REDACTED]
W: www.dpp.act.gov.au

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Mention Brief Adjudication Sheet

PART A: TO BE COMPLETED BY THE INFORMANT – ALL QUESTIONS TO BE ANSWERED			
Full name	[REDACTED]	Mention date	[REDACTED]
Offence/s	[REDACTED]	Charge number/s	[REDACTED]
Is this a family violence matter?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
FVEIC attached (x2 video copies)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the Defendant a Juvenile? (10-17 years)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the Juvenile eligible for Restorative Justice? (See Aide Memoire. If eligible, the Restorative Justice referral MUST be made through Supportlink before prosecution action commences*)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
For Adult Defendant/s, has Restorative Justice been considered?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Who will be responsible for completing and submitting the Brief of Evidence?	<input checked="" type="checkbox"/> Informant	<input type="checkbox"/> Corroborator	
Has each document been imported into PROMIS & a document created in the incident log (Police statements only to be imported after approval by Adjudication & Practices (A&P))?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Bench sheets relating to each charge are attached?	<input checked="" type="checkbox"/> Yes		
Statement of Facts is attached – 4 copies, and includes:			
a. General information covers points of proof & provides a clear indication of the strength of the prosecution	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
b. Witness summary (Civilian) provides a concise account of that person's evidence and their availability to attend court as required. (Police) outline actions undertaken and unavailable dates (e.g. obtained statement, arrested defendant, conducted ROI, obtained photographs etc.)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
c. Witness, DOB, address and telephone details do not appear on Statement of Facts (unless relevant to offence)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
d. Record of Interview is summarised in Statement of Facts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
If the person was not interviewed, why?			
Primary complainant or witness statement is attached?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Private information not relevant to offence/s is redacted	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Other relevant material (specify):	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A Images, CCTV footage
Interpreter required? (to be arranged by informant)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Road transport (alcohol & drugs) documents attached	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Compensation has been addressed, schedule and supporting documents attached	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
DPP Victim Details form attached?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Victim has been informed about VIS (VIS not to be submitted until Sentencing)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
Copy of drug seizure form attached including estimated weight?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A
The case is fully disclosed within this brief?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

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Informant/Corroborator's endorsement	
Name: [REDACTED]	Rank/Badge number: [REDACTED]
Location: [REDACTED]	Date: [REDACTED]
Signature: [REDACTED]	

Team Leader's endorsement	
Name: [REDACTED]	Rank/Badge number: [REDACTED]
Location: [REDACTED]	Date: [REDACTED]
Signature: [REDACTED]	

PART B: TO BE COMPLETED BY THE ADJUDICATING MEMBER (INCLUDING WATCH HOUSE SERGEANT)	
The informant has correctly completed Part A?	[REDACTED]
The correct charges have been laid?	[REDACTED]
The following evidence is present in the SOF:	[REDACTED]
a. The proofs or elements of the offence are covered	[REDACTED]
b. Common proofs are covered (date, place, time, jurisdiction, identity)	[REDACTED]
c. Obvious or statutory defences have been negated	[REDACTED]
d. Have rules of evidence been followed (e.g. relevant hearsay, correct questioning, caution etc.) – if not please address on back of this sheet for Judicial Operations	[REDACTED]
e. Rules relating to disclosure have been followed	[REDACTED]
The Statement of Facts accurately reflects the strength of the prosecution case?	[REDACTED]
Private information not relevant to offence/s is redacted	[REDACTED]
Compensation has been addressed and schedule and supporting documents attached?	[REDACTED]
Procedure has been followed relating to Victim Impact Statements?	[REDACTED]
The DPP Victim Details form is completed and placed on file?	[REDACTED]
There is a reasonable prospect of a successful conviction based on the evidence presented?	[REDACTED]
Further investigation/action is needed: (If Yes see Brief Adjudication Feedback Sheet)	[REDACTED]
Adjudicating Members endorsement	
Name: [REDACTED]	Rank/Badge number: [REDACTED]
Location: [REDACTED]	Date: [REDACTED]
Signature: [REDACTED]	

Exhibit 154

From: Greig, Mitchell [REDACTED]
Sent: Friday, 30 September 2022 2:41 PM
To: Rachel Fisher
Cc: Jerome, Skye; Pitney, Sarah; Whybrow [REDACTED]; Katrina Musgrove; jullienne [REDACTED]; [REDACTED]
Subject: Conference Notes (DPP Ref: 202113941)
Attachments: Optus - CCR and RCCR - [REDACTED] (Cleaned) Bruce LEHRMANN.xlsx; Monday 26 October 2022 – Conference Notes for [REDACTED].pdf; Thursday 29 October 2022 - Conference Rebecca [REDACTED].pdf

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Dear Rachel,

Attached two conference notes.

Regarding the Excel spreadsheet, it is attached for ease of information. Skye and I had a conference call with [REDACTED] today at 2.15pm. [REDACTED] informed us that between rows 28 – 40, there is a total of 6 calls made, ie. Rows 28 & 29 are one call, Rows 30 & 31 are another call.

Kind regards,



Mitchell Greig
Prosecutor Associate
Office of the Director of Public Prosecutions (ACT)
[REDACTED]
T: [REDACTED]
W: www.dpp.act.gov.au

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Exhibit 154

Thursday 29 October 2022 – Conference Notes for Federal Agent Rebecca [REDACTED] (Telephone Call)

In Attendance: Skye Jerome & Mitchell Greig

1 April – Came to be alerted by meeting Higgins due to phone call which was made to TL Paul [REDACTED] Sensitive issue had come in and mobile number was left. Relating to a female in Minister Reynolds issue. Provided with mobile number. Phone call came in about 10am that morning, made appointment for 12pm that day. Rebecca wasn't present for when phone call came in. Was in the office at the time of the phone call but was doing other things.

Started work at 9.45am. Phone call came in, Paul [REDACTED] must have been on the phone when came in to work.