SUPREME COURT OF QUEENSLAND

CITATION:	*R v Cowan* [2014] QSC 41
PARTIES:	**R** **v** **COWAN, Brett Peter (also known as Shaddo N-Unyah Hunter)** (defendant) **SEVEN NETWORKS (OPERATIONS) LTD** (first applicant) **NINE NETWORK AUSTRALIA PTY LTD** (second applicant) **THE AUSTRALIAN BROADCASTING CORPORATION** (third applicant) **NETWORK TEN PTY LTD** (fourth applicant) **QUEENSLAND NEWSPAPERS PTY LTD** (fifth applicant by leave)
FILE NO/S:	SC No 323 of 2013
DIVISION:	Trial
PROCEEDING:	Application
DELIVERED ON:	14 March 2014
DELIVERED AT:	Brisbane
HEARING DATE:	12 and 14 March 2014
JUDGE:	Atkinson J
ORDER:	**The application is dismissed.**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – MISCELLANEOUS POWERS OF COURTS AND JUDGES – DIRECTIONS IN RELATION TO RECORDINGS – where the applicants are a number of media organisations who applied for permission for audio and video recording of sentencing remarks in a murder trial – whether the application should be granted *R v Avent* (Unreported, No 1436 of 1995, 17 May 1995, Supreme Court of Victoria, Teague J), cited *R v Avent* (Unreported, No 124 of 1995, 22 December 1995, Victorian Court of Appeal), cited *R v Williams* [2007] VSC 139, cited
COUNSEL:	M R Byrne QC, with G P Cash for the Crown A J Edwards for the defendant

P J McCafferty for the media applicants

SOLICITORS: Director of Public Prosecutions (Qld) for the Crown
Bosscher Lawyers for the defendant
Thynne & Macartney for the media applicants

[1] I am giving my reasons with regard to this application ex tempore because I regard it of the utmost public importance that the court moves to sentence Mr Cowan, who has been convicted of these crimes, as soon as possible, so I have not delayed to reduce my reasons to writing.

[2] An application has been made for orders to permit audio and video recording and publishing of firstly the return of the jury's verdict and then the pronouncement of sentence and sentencing remarks. I have refused the application for a recording of the jury's verdict for reasons which were given earlier. It now falls for me, since Mr Cowan has been convicted, to determine the application for audio and video recording and publishing of the pronouncement of sentence and sentencing remarks.

[3] The application has been made by four television networks, and this morning, by leave, Queensland Newspapers was added to that application. The applicants set out various reasons in their written submissions as to why I should grant the application, saying that it was consistent with the principle of open justice and would promote fair and accurate recording of the sentence imposed and the reasons for it and that it was not inconsistent with the Practice Direction of this court, which is Practice Direction 8 of 2014, and that I had power to make the order.

[4] The application was opposed by both the Director of Public Prosecutions and counsel for the defendant. Both of them submitted that televising of the sentence would be the first time that had ever been done in Queensland and would have a tendency to sensationalise the proceedings and was not necessary in order to further the interests of open or public justice.

[5] It is the case that this has never been previously done in Queensland and therefore I should exercise caution before I should embark upon such an exercise. Accordingly, I intend to make my decision in accordance with principle and practice.

[6] The principle by which the courts operate in criminal trials is that proceedings are conducted in public and everything we do is subject to fair and accurate reporting. This trial has been conducted and is being conducted in public and every effort has been made by the court to ensure, as far as possible, that there be fair and accurate reporting. To this end, applications by the media have been heard and determined for access to exhibits and a great deal of access has been allowed and the media has taken full and, for the most part, fair advantage of that access.

[7] Nothing about the principle of open justice really is determinative of whether or not sentencing remarks should or should not be televised, so I have had regard to practice. When I have regard to practice, I look in particular at two decisions from Victoria.

They are the decisions in *R v Avent* at first instance before Justice Teague, a decision made on 17 May 1995, and the appellate decision with regard to Justice Teague's decision, which is *R v Nathan John Avent*, a decision reached by the Supreme Court of Victoria Court of Appeal on 22 December 1995, and the decision of Justice King in *R v Williams* [2007] VSC 139 made on the 4th of May 2007.

[8] Justice Teague allowed televising of his sentence. There was, it must fairly be said, implied – and fairly strong implied – criticism of that decision in the appellate reasons. Justice King took a different view from that of Justice Teague and was of the view that filming and televising the sentencing proceedings, would not assist in the fair and open administration of justice.

[9] In Victoria, the difference of opinions and practice in judges has led to the court taking what in my view is a very sensible step, and that is to have the audio of sentences available online on the court's website for the media and the public, but that has been a decision of the Supreme Court of Victoria which standardises the practice, and I see that Justice King, for example, has taken advantage of that, and her reasons for sentence, along with those of other judges, is available on the Supreme Court of Victoria website.

[10] In New South Wales, a practice direction was published by the then Chief Justice on 16 December 2009 and standardises the approval process for the application and potential grant of such recordings. It involves an application being made through the public information officer to a presiding judge. I pause to note that this court does not have a public information officer. There is then a standardised way of dealing with any such recording. There is no such practice direction in Queensland, and, indeed, I pause to note that while there have been examples of this being done in New South Wales, the way in which they appear to be available online is somewhat ad hoc and those that are available on various places online for example on You Tube are not available in the kind of way which suggests that it adds to the dignity of the court or the respect for court proceedings, unlike the practice which has been adopted in Victoria.

[11] In Queensland, we have a practice direction issued by the Chief Justice this year, Practice Direction 8 of 2014. It provides for what the court regards as the appropriate way of having its proceedings dealt with. It does not provide for the televising of proceedings. In fact, it provides to the opposite, although, as I've said and I accept, it is within the discretion of a trial to deal with the proceedings by allowing that. There are accordingly no standardised procedures in this State or in this court. There is no public information officer who can deal with it. There is no control over the way in which it is to be published, and accordingly it would be a very difficult practice to impose on an ad hoc basis as it has been asked to be done in this case.

[12] Accordingly, while I might personally be in favour of recordings of court proceedings being available to the media and, as I have said, I have done everything with the consent of the parties in this case to make the exhibits as publicly available as possible, I do not think that it would be appropriate for me to allow the sentencing remarks to be recorded on this ad hoc basis.

[13] I should say there is a further reason which is consistent with principle and is perhaps more pragmatic, and that is it is my view that the defendant should be sentenced as soon as possible, and that would not be possible if I were to delay the sentence to allow conditions to be worked out for filming, and conditions to be worked out for any broadcasting of any filming, which would only serve to delay the sentence further, and that is not in the public interest.

[14] I am also minded, of course, that the application is opposed by both the parties to the proceedings and it would be, therefore, unusual to allow an application which is opposed by both the parties, the DPP representing the prosecuting authorities of this state, and the defence, and nobody else with an interest in it, such as the family of the victim, has urged that I should allow the sentencing to be filmed and published by broadcasting. Accordingly, I refuse the application.