

# SUPREME COURT OF QUEENSLAND

CITATION: *R v Coventry* [2021] QCA 17

PARTIES: **R**  
**v**  
**COVENTRY, Shaun Peter**  
(appellant/applicant)

FILE NO/S: CA No 312 of 2019  
DC No 390 of 2019

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction & Sentence

ORIGINATING COURT: District Court at Townsville – Date of Conviction:  
19 November 2019 (Farr SC DCJ)

DELIVERED ON: 12 February 2021

DELIVERED AT: Brisbane

HEARING DATE: 2 October 2020

JUDGES: McMurdo JA and Boddice and Wilson JJ

ORDERS: **1. The appeal is dismissed.**  
**2. Leave to appeal is refused.**

CATCHWORDS: APPEAL AND NEW TRIAL – NEW TRIAL IN GENERAL AND PARTICULAR GROUNDS – PARTICULAR GROUNDS – verdict unreasonable – alternatively verdict cannot be supported having regard to the evidence – where a jury found the appellant guilty of two counts of using electronic communications to procure a child under 16, two counts of indecent treatment of a child under 16 and one count of involving a child in making child exploitation material – where the appellant relies on one ground of appeal against his conviction, namely, that the verdict was unreasonable or cannot be supported having regard to the evidence – whether the evidence was sufficient to establish the necessary link between the appellant and the user of a telephone number and social media account, such that the jury could be satisfied beyond reasonable doubt of his guilt of the offences

*SKA v The Queen* (2011) 243 CLR 400; [2011] HCA 13, cited

COUNSEL: S W Jones for the appellant/applicant  
C M Cook for the respondent

SOLICITORS: No appearance for the appellant/applicant  
Director of Public Prosecutions (Queensland) for the

respondent

- [1] **McMURDO JA:** I agree with Boddice J.
- [2] **BODDICE J:** On 19 November 2019, a jury found the appellant guilty of two counts of using electronic communications to procure a child under 16, two counts of indecent treatment of a child under 16 and one count of involving a child in making child exploitation material.
- [3] On the same date, the appellant was convicted and sentenced to two years imprisonment on each count, to be served concurrently. A parole eligibility date was set at 18 November 2020.
- [4] The appellant appeals his conviction. An application for leave to appeal his sentence was filed but not pursued at the hearing.
- [5] The appellant relies on one ground of appeal against his conviction, namely, that the verdict was unreasonable or cannot be supported having regard to the evidence.
- [6] At issue is whether the evidence was sufficient to establish the necessary link between the appellant and the user of a telephone number and social media account, such that the jury could be satisfied beyond reasonable doubt of his guilt of the offences.

### **Background**

- [7] One count of using electronic communication to procure a child under 16, one count of indecent treatment of a child under 16 and the count of involving a child in making child exploitation material related to a single female complainant, aged 14 years at the time of the alleged offence. The remaining counts related to another female complainant, aged 13 years at the time of the offences.
- [8] Both female complainants resided in the Bowen area. Each communicated with someone said to be an adult male, named Luke Norbert. It was not in dispute at the trial that Luke Norbert had no reasonable grounds to believe that either complainant was of or above the age of 16 years.
- [9] The Crown case was that the appellant had procured each complainant to engage in sexual acts, had sent the same photograph of an adult penis to each complainant and had the first complainant take sexual photographs of herself.
- [10] Evidence led in the Crown case established that Luke Norbert telephoned the first complainant on 6 July 2017 from what was recorded as a blocked number. The telephone number used to call the first complainant was connected on 13 February 2017 and registered to the appellant for approximately 18 months.
- [11] A central issue at trial was whether the appellant was the user of the telecommunications, under the pseudonym, Luke Norbert. The Crown accepted at trial that the case against the appellant was circumstantial.

### **Evidence**

- [12] The first complainant gave evidence that she was using Facebook one evening when she clicked onto a profile in the name of Luke Norbert and started a conversation.

The profile had a depiction of a male standing in the mirror taking a selfie. On the left side of his chest was a tattoo of a lion. In the initial conversations, Luke Norbert said he was “18, 19, around that”. The first complainant said she was 15. Almost straight away the conversation turned to sexual questions, such as did she “like cock”.

- [13] The first complainant said she sent Luke Norbert photos of her breasts and the rest of her body. She used her telephone to send three photographs of her standing in front of a mirror, wearing her bottom underwear, which was like a G-string. Luke Norbert sent her a photograph of his penis. The first complainant described it as “like this big penis and it just looked fake”. It looked it was taken “offline” and “screenshotted”.<sup>1</sup>
- [14] The first complainant said the conversation over her telephone continued to the point where Luke Norbert asked for her phone number and address. She gave him both. Luke Norbert then telephoned her “really fast”. Again, the whole conversation was sexual. Luke Norbert was talking dirty to her, wanting her to do things like finger herself or use the end of a hairbrush or a deodorant can. When asked what she thought Luke Norbert meant, she replied “[f]uck myself with a hairbrush or deodorant can”.<sup>2</sup> She made it look real by pretending and fake moaning over the phone. Luke Norbert was saying she sounded hot and sexy when she moaned.
- [15] The first complainant said there were messages after those conversations in which she told Luke Norbert to delete the photographs. He said he could not because it was his friend’s account and that his friend would not delete them but would, instead, post them on the internet. Luke Norbert was calling her “a slut if I didn’t send him more or have sex with him”.<sup>3</sup> At that point, the first complainant told a lie and said her father was a head cop.
- [16] The first complainant said, after she kept saying to Luke Norbert that his stories sounded like a lie, he told her things about him that were true. He said he was a 28 year old, lived in Bowen and that she would not like him because he was oversized. Luke Norbert asked her to get some other girl for him. She gave him the beginning of names of other girls she knew who would do something he wanted her to do. She did not give those girls’ full names. Luke Norbert replied he did not want them, he wanted her and kept saying she was hot and that he wanted to meet up with her.
- [17] The first complainant estimated she had as many as six telephone calls from Luke Norbert. Every telephone call was about something sexual. After the telephone conversation in which Luke Norbert gave identifying details, she received a telephone call from Luke Norbert whilst she was with her father. She gave the telephone to her father. Luke Norbert hung up immediately. A day or two later, very early in the morning, she received a phone call from Luke Norbert. He said he would put a thousand dollars in the mailbox and that he was sorry for what he had done.
- [18] The first complainant said that, whilst they had exchanged messages and photos and had conversations on the telephone, Luke Norbert did not ever give her his mobile

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<sup>1</sup> AB179/40.

<sup>2</sup> AB182/10.

<sup>3</sup> AB183/30.

telephone number. The longest telephone call between them was approximately 20 minutes. On no call did she see the number Luke Norbert was calling from, as it was shown as unknown. There was nothing in their telephone conversations which enabled her to determine his age.

- [19] The first complainant described Luke Norbert as having a deep voice, with a lisp towards the ends of his words, although she thought it was just him being quiet on the telephone. She did not hear any background noises and nothing in their discussions assisted her in finding out who Luke Norbert was, as the conversations were very limited and all sexual. There was no conversation about work or anything else.
- [20] The second complainant gave evidence that she had received a text on Facebook Messenger. When she responded, she straight away received a text in which the person said he was Luke. She told him she was 14 although, at the time, she was 13. He said he was 20 and from Bowen. They spoke about meeting up in person, but she said she would not meet him.
- [21] The second complainant said the user name was Luke Norbert and the communications took place in the middle of 2017. Whilst there normally is in a Facebook profile a lot of personal information, there was very little information about Luke Norbert except for his profile picture and name. She did not have any telephone contact with him. They only spoke through messages on Facebook.
- [22] After the discussions about their ages, the male asked her if she was a virgin and whether she liked “big dicks”. He sent her a “dick pic”<sup>4</sup> straight away and kept repeatedly sending the same photo. She replied that she did not need to see that at all. She stopped texting him after that communication. He would say hi every now and then, but she said she did not want to talk to him. When he tried to start a conversation again, she showed her mother, who communicated telling him to stop texting her daughter. His account was removed shortly thereafter.
- [23] The second complainant said she did not ask for the photo that the male sent to her. It was just a photograph of a penis. It did not show anything. He sent the same photo two or three times. She kept ignoring it. Eventually she asked him to stop sending it. She then showed her mother. That was when he stopped texting her altogether. She no longer had the messages between them as Facebook removed due to inappropriate content. When she looked up his name on Facebook, the account had been completely deleted. She kept all of her messages but could not see any of his messages. There were not a lot of messages between them before her mother became involved and started to text Luke Norbert.
- [24] Paul Francione, a Telstra business specialist, gave evidence that the mobile telephone service used by the first complainant was registered to her father and was a prepaid service. That service was connected on 8 December 2014 and was still active.
- [25] Call charge records for that number recorded a number of telephone calls on 6 July 2017 from mobile telephone number [Redacted]. That service was a prepaid service in the name of the appellant, with a connection date of 13 February 2017 and a disconnection date of 12 July 2018.

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<sup>4</sup> AB225/2.

- [26] Those records recorded, not only the number of the party making and receiving the call, but also the IMEI number for the telephone device used for that call. The records also recorded the location from which the call had been made. The IMEI was personal to the handset. A SIM card was specific to the telephone number but may be transferred from one handset to another. The handset number can be searched to identify the owner of it.
- [27] No evidence was produced as to the holder of the device having the IMEI numbers recorded in the relevant call records. No evidence was also led to establish the IMEI number of the mobile telephone device in the appellant's possession when he activated the relevant SIM card or the mobile telephone device found in his possession at the time of the police search.
- [28] Francione gave evidence of another telephone number [Redacted], being a prepaid service registered in the appellant's name. That service was connected on 16 November 2017 and remained active and registered to the appellant.
- [29] The second complainant's mother gave evidence that the second complainant told her on 10 September 2017 that she had received an inappropriate message on her telephone. She was shown a picture of an erect penis. The second complainant's mother went on to Facebook Messenger and messaged the person to ask them to stop messaging her daughter. She added a swear word and the words "or you'll regret it". The profile of the person sending the message was under the name Luke Norbert. It had a picture of a man with no shirt on, who had a tattoo on his chest. She could not recall any observations about personal information contained in that Facebook account. She reported the matter to police on 25 September 2017. When she tried to regain access to the profile page of Luke Norbert it was not active.
- [30] Ross Petersen gave evidence that he was the investigating officer in relation to both complaints. He received a complaint from the first complainant on 6 September 2017. Petersen received a second complaint on 25 September 2017. He subsequently spoke to both complainants in October 2018. In the interim, he had undertaken some enquiries which revealed the telephone number that had been used to contact the first complainant on 6 July 2017. A person using that telephone number had contacted the first complainant on four separate occasions on 6 July 2017, between midnight and three in the morning. The registered user of that telephone number was the appellant.
- [31] Petersen sought to make enquiries concerning communications with the second complainant via Facebook Messenger. Facebook declined to provide any evidence on the grounds of privacy.
- [32] On 10 October 2017, Petersen executed a search warrant at the appellant's address. He seized several electronic items, including a mobile telephone. No evidence was found on any of those devices that connected the appellant to the conversations with the first complainant. In particular, the SIM card assigned to telephone number [Redacted] was not found by police when a search was conducted of the appellant's house. There was no evidence as to the location of that SIM card.
- [33] On 4 May 2018, the appellant voluntarily participated in an interview with Petersen. The appellant said his birth date was 21 May 1989. The appellant said he was not known by any other name. He said he was a local boy, having been born in Bowen. He currently resided in Bowen. His current mobile telephone number was [Redacted].

- [34] The appellant said he did not know anybody by the name of Luke Norbert and did not know anything about a Facebook account in the name of Luke Norbert. He did not recognise the mobile telephone number [Redacted] and said he did not know the first complainant. The appellant did not know anything about four telephone calls made to the first complainant between 12.20 am and 2.58 am on 6 July 2017 from mobile telephone number [Redacted]. He also did not know about any chat on Facebook Messenger between the first complainant and a Luke Norbert. The appellant accepted that mobile telephone number [Redacted] was registered to him, but did not remember that number.
- [35] The appellant said mobile telephone number [Redacted] was used by him. He changed because that number was an Optus number and he needed Telstra where he was working at that time. He ceased using that telephone number at the start of February 2017. When told by police that mobile telephone number [Redacted] had been used to make the telephone calls to the first complainant on 6 July 2017, the appellant said he had stopped using that phone number when he received a new SIM card with Telstra. The appellant said he was going to continue using the other number but he had lost the SIM card. The SIM card for the new number was bought by a work colleague. That was the number he was presently using, being [Redacted].
- [36] The appellant accepted that mobile telephone [Redacted] had been registered to him on 13 February 2017, but said he had not used that number at all since that time. He did not know what had happened to that SIM card. He had not been able to find it. He had lost it when he was working out at Moranbah in February. It was in a big bag full of clothes and, when he went home, he could not find it. He described it as a little, tiny SIM card and said he could have dropped it anywhere. He said he had put the SIM card in his clothes when he was coming home from work and it could have been “chucked in a pocket of a shirt, through a washing machine, anywhere.”<sup>5</sup>
- [37] The appellant denied having ever sent an inappropriate image to a person under the age of 16 years or ever threatening to post photographs of an under-aged person online or of having ever received photographs of an underage person via the internet. The appellant said he did know the second complainant and he had not ever sent inappropriate images to the second complainant. He had nothing to do with the Facebook account in the name of Luke Norbert.
- [38] The appellant said the lost SIM card was a prepaid service. If you do not pay any credit, the service is cut off. He thought it would have been discontinued by now as it was over a year ago. He has not continued to pay for that SIM card. It would have been in the middle of February 2017 when he stopped using it and changed over to Telstra. Credit for that phone would have been used before that time.
- [39] Petersen accepted that, when he executed the search warrant, he located a mobile telephone which contained a SIM card. He described the mobile telephone as “a quite new Samsung device”. The SIM card was for telephone number [Redacted] that was said by the appellant to be his current telephone number. Petersen accepted that the Telstra records indicated that that number was not connected until November 2017. He did not know what number the appellant had in his possession on 10 October 2017. He could not state the IMEI number for the Samsung device.

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<sup>5</sup> AB265/35.

### **Appellant's submissions**

- [40] The appellant submits that the evidence led at trial was insufficient to satisfy the jury beyond reasonable doubt that the appellant was Luke Norbert. Although there was evidence of a connection between the appellant and the SIM card for the telephone number used to contact the first complainant, there was evidence, through the appellant's interview with police, that the appellant had lost that SIM card prior to the commencement of the alleged offending behaviour. As the SIM card could be used in any device, the Crown could not exclude that a person other than the appellant had found the relevant SIM card and used it in another device for the purposes of contacting the first complainant. A similar lack of connection between the appellant and the person "Luke Norbert" existed in relation to the evidence in respect of the offences against the second complainant.

### **Respondent's submissions**

- [41] The respondent submits that the evidence was sufficient to satisfy the jury beyond reasonable doubt of the appellant's guilt of each of the offences. Whilst police did not find any evidence in the search of the appellant's house, which established direct possession of the SIM card by the appellant, or of the relevant mobile telephone device used to make the telephone calls, there was evidence that the appellant was the registered owner of the SIM card, that the SIM card had been activated and was operative throughout the course of the offending and that the appellant fitted the description provided by Luke Norbert, in that the appellant lived in Bowen, was 28 years of age at the time and was oversized.
- [42] The fact that the Crown did not lead evidence of an IMEI link to a particular phone used by the appellant did not render the jury's verdicts unreasonable. Whilst the jury raised a question in relation to evidence of an IMEI link to a particular phone used by the appellant, the trial Judge correctly told the jury they must act on the evidence led at the trial. The fact that the IMEI owner was not established, was a matter used in the appellant's favour in addresses to the jury. The only hypothesis consistent with innocence advanced before the jury was that the appellant had lost the SIM card used to call the first complainant on 6 July 2017 prior to those communications. Having regard to all of the circumstances including evidence that the SIM card was operative up until the first complainant's mother had challenged Luke Norbert, it was open to the jury to reject the appellant's account. The jury could then be satisfied beyond reasonable doubt that there was no hypothesis consistent with innocence and that the appellant was, in fact, Luke Norbert.

### **Consideration**

- [43] A determination of whether a verdict of guilty is unreasonable requires an Appellate Court to undertake its own independent assessment of both the sufficiency and quality of the evidence and determine whether, notwithstanding that there is evidence upon which a tribunal of fact might convict, it would be dangerous in the circumstances to permit the verdict to stand.<sup>6</sup>
- [44] In undertaking that assessment, due regard is to be given to the jury's verdict and the benefit it had of seeing and hearing the witnesses. If, however, the relevant independent assessment reveals the evidence contained discrepancies, inadequacies,

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<sup>6</sup> *SKA v The Queen* (2011) 243 CLR 400 at [14].

was tainted or otherwise lacked probative force, such as to lead the Appellate Court to conclude that, even allowing for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, the verdict of guilty is to be set aside as unreasonable.<sup>7</sup>

- [45] The jury were properly directed to the effect that the case against the appellant was a circumstantial case and that, in determining whether they were satisfied beyond reasonable doubt of the appellant's guilt of each of the offences, they should consider all of the evidence as a whole and make an assessment based upon that evidence.
- [46] Although the Crown case lacked any evidence as to the IMEI number for the device used by the appellant when the relevant telephone number was first registered to his name and lacked any evidence as to the IMEI number of the Samsung device seized by police in the course of the search of his home, there was evidence sufficient to satisfy a jury beyond reasonable doubt that the appellant was the person who set up and adopted the profile Luke Norbert and was the person who communicated with the first complainant initially through that profile and subsequently via the telephone number [Redacted].
- [47] That conclusion flows from an acceptance of the un-contradicted evidence that the appellant was the registered holder of the SIM card relevant to that number; that that number had been connected on 13 February 2017 and disconnected on 12 July 2018; that the appellant registered a new mobile service, being number [Redacted], on 16 November 2017; and that the person using the profile Luke Norbert used that telephone number, [Redacted], to make the four calls to the first complainant on 6 July 2017 and identified themselves in the course of those calls as a 28 year old, oversized male from Bowen, in circumstances where, having regard to appellant's interview with police, the appellant was a 28 year old, oversized male from Bowen.
- [48] Whilst the appellant told police he had lost the SIM card relevant to that service and had last used it in early February 2017, when he changed to Telstra as it was an Optus number, it was open to a reasonable jury, properly instructed, to reject that explanation. There was evidence that the service was a Telstra service and was not itself registered until 13 February 2017. Further, there was an inherent improbability in another person having found the lost SIM card and using it many months later as part of the profile Luke Norbert, giving as a description that they were a 28 year old, oversized man from Bowen, a description fitting the appellant.
- [49] That inherent improbability properly allowed the jury to reject, as a reasonable hypothesis consistent with innocence, that someone other than the appellant had used the relevant SIM card in the course of communicating with the first complainant. The likelihood of a person, who had adopted a pseudonym to engage in criminal conduct, using their own registered SIM card was a factor the jury considered. It was open to the jury to accept the appellant was Luke Norbert, notwithstanding that circumstance.
- [50] Once it is concluded that it was open to a reasonable jury, properly instructed, to find that the appellant was the male using the profile Luke Norbert, who contacted the first complainant in respect of the communications the subject of counts 1, 2 and 3, it was also open to the jury to be satisfied beyond reasonable doubt that the

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<sup>7</sup> *Pell v The Queen* [2020] HCA 12.

remaining elements of each of those offences had been established by the Crown beyond reasonable doubt. Those elements were not seriously in contention at trial.

- [51] Upon the jury being satisfied beyond reasonable doubt, that the appellant was the male who adopted the profile Luke Norbert, it was open to the jury to be satisfied beyond reasonable doubt that the appellant was also the person who adopted the profile Luke Norbert in the communications with the second complainant, the subject of the remaining counts on the indictment. There was an inherent improbability that another person other than the appellant had also adopted the profile Luke Norbert in undertaking those communications, particularly having regard to the striking similarity between the nature of those communications, including the sending of a picture of an erect penis and the immediate discussions of a sexualised nature.

### **Conclusions**

- [52] An independent assessment of the evidence as a whole establishes that it was open to the jury, properly instructed, to be satisfied beyond reasonable doubt that the male adopting the profile Luke Norbert and engaging in the communications the subject of each of the counts of the indictment was the appellant.
- [53] Once that conclusion was reached, it was open to the jury to be satisfied beyond reasonable doubt of each of the elements of each of the offences. There is no significant possibility an innocent person has been convicted of the offences.

### **Orders**

- [54] I would order that:
1. The appeal is dismissed.
  2. Leave to appeal is refused.
- [55] **WILSON J:** I agree with the reasons of Boddice J.