

## CRIMINAL TRIAL THREAD SCENARIO

The seventh prosecution witness is Jill Ted, the former girlfriend of James Swiftly. Jill Ted's evidence raises tendency or coincidence evidence issues. Other rules of evidence, including relevance, hearsay, opinion and credibility are also raised. The Crown Prosecutor will conduct the examination in chief of this witness and attempt to adduce all relevant and admissible evidence going to proof of facts in issue. Defence counsel will then cross-examine the witness with the specific aim of casting doubt on the truthfulness, accuracy and reliability of her evidence.

### INSTRUCTIONS TO COUNSEL

Jill Ted has been given immunity from prosecution in relation to the 2011 robbery.

Counsel for the prosecution must attempt to adduce evidence of the 2011 robbery as tendency and/or coincidence evidence. Counsel for the defence will object on the basis that the evidence does not meet the test for admissibility for such evidence. Both counsel must argue either for or against admission of the evidence on the basis of s 97 and/or s 98, taking into account s 101 and the case of *R v Ellis* [2003] 58 NSWLR 700.

Both prosecution and defence counsel must be prepared to make and answer objections relating to the form or appropriateness of opposing counsel's questions and the relevance of any evidence that is sought to be adduced, whether it is hearsay, an admission or an opinion. Counsel may make *limited* reference to whether the probative value of any evidence sought to be adduced by the prosecutor is outweighed by the danger of unfair prejudice to the defendant (s 137).

Defence counsel must be prepared to cross-examine Jill Ted using her statement if the witness gives evidence that is different from her statement. Your cross-examination must comply with s 43. You do not have to refer to s 43 unless asked, but you must follow the procedure. Both counsel should consider using a map of the area to take the witness through her testimony. Defence counsel must comply with the rule in *Browne v Dunn*.

Date: 5 March 2014

STATEMENT in the matter of: <b>JAMES SWIFTY</b>		
Full Name:	Jill Ted	
Home Address:	14 Young Place Deakin	Phone Work: 0422 123 456
Occupation:	Travel Agent	
Employer:	World At Your Feet	
Work Address:	Canberra Centre	STATE: ACT
<ol style="list-style-type: none"><li>1. This statement made by me accurately sets out the evidence which I would be prepared if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.</li><li>2. My full name is Jill Ted. I am 20 years of age and reside at 14 Young Place, Deakin. I am currently employed as a Travel Agent by the company 'World at Your Feet' in the Canberra Centre. I've only been working in the position for a few months. I work three days a week.</li><li>3. On the 17 January 2014, I was in Civic with James Swifty. He was my boyfriend, but we're not together anymore. He'd been sleeping over at my house, where I live with my parents. They don't like him much, so I used to sneak him in through the window late at night. He's not much older than me. We had been going out together off and on since late 2011. I took him to my year 12 formal even though he was from a different school. I would describe Swifty as just under six foot, stocky build, dark olive complexion with short black hair. He has a distinctive tattoo of a lizard on his neck, I think it is meant to be a goanna. I've seen him playing with a knife at my place. Sometimes he takes it with him when he goes out.</li><li>4. We'd caught a bus to Civic where I had to do some shopping. I remember James was wearing a pair of black shorts, a white singlet and a shiny red tracksuit top. We arrived in Civic a bit before 10am and went to the Federal Bank on the corner of London Circuit and Ainslie Avenue. There was a long line-up and it took me a while to get to the teller. James just hung around inside waiting for me.</li><li>5. I remember that James was a bit agitated that day. He is always talking about money and coming up with dreams of what we could do if we had money. He's never had a job in his life, but after I started work at the travel agent, he began going on about flying to Hawaii or some tropical island.</li><li>6. After we left the bank we went to Garema Place and met up with a few friends—Trevor Gangland, Iya Heardirn, and Simon Noluck. We were just hanging out, talking and smoking. We were there for around an hour or so then James left the group. I don't know where he was off to, but he went in the direction of the interchange. I remember that he was away for a while. I don't know how long exactly, but he came back from the direction of the interchange. Then the police showed up and arrested him.</li><li>7. James and I stayed together for another few months after that, and then we broke up because he started seeing someone else. We never did go on that holiday. James was always a no hoper and he never had any money.</li><li>8. I was with James on the last occasion that he committed a robbery. I don't remember the date but it was just before my formal in 2011. I haven't told anyone about it till now, but James did some time in jail for it. What happened that time was that we were both in Civic walking past a flexi-teller near the merry-go-round when we saw an elderly woman take a lot of cash from the slot and put it in her handbag. She looked like she was around seventy years old and she walked with a walking stick. James suddenly ran over and ripped the handbag from her arm. She wouldn't give it to him so he punched her in the face, knocking her to the ground. Then we ran off together. I didn't know that he was going to do it, but I did spend some of the money on my formal dress and I didn't tell anyone about what had happened.</li></ol>		

Statement taken and Signature witnessed by me  
on Wednesday 5 March 2014 at 11:00 a.m.

## INSTRUCTIONS TO WITNESS

You must be prepared to give evidence by reference to a map of Civic. James Swifty cheated on you not long after the events of 17 January 2014. You hate him and you'd like to see him rot in prison. You have been granted immunity from prosecution in relation to the 2011 robbery for which Swifty has already served time. You are pretty hazy on the timing and details of what took place on 17 January 2014 and what anyone was wearing. You didn't see him carrying a knife on 17 January 2014.

*Note:* When being examined by counsel for the prosecution you will say that James Swifty walked off in the direction of the bank and came back from that direction. You will not change your evidence on this unless counsel for the defence makes you read your statement in cross-examination, at which point you will agree that he did walk off in the direction of the interchange and came back from that direction.