

CRIMINAL TRIAL THREAD SCENARIO

The fourth prosecution witness in the 'armed robbery' trial of James Swifty is Constable Judy Dredd, the arresting and principal investigating police officer who conducted a tape-recorded interview with the defendant. The Crown Prosecutor will conduct the examination in chief seeking to adduce all relevant and admissible evidence going to proof of facts in issue in the case. Defence counsel will make objections as necessary, including seeking a *voir dire* as to the admissibility of the record of interview during examination in chief and then cross-examine the witness.

INSTRUCTIONS TO COUNSEL

Counsel for the prosecution *must* endeavour to adduce evidence of what Sammy Teller said to James Swifty and of James Swifty's response. This will be objected to by defence counsel, and the prosecution will argue for its admissibility on the basis that it is an admission, with defence counsel endeavouring to counter this submission. Counsel must refer to s 81 and definitions in the dictionary and elsewhere as necessary. Limited reference may be made to s 23V *Crimes Act 1914* (Cth).

At the conclusion of the witness's evidence in chief, counsel for the prosecution *must* seek to tender the transcript of the tape-recorded interview. This will be objected to by defence counsel on the basis that its admission would be unfair (s 90) and contrary to public policy (s 138) having regard to s 23H *Crimes Act 1914* (Cth) and *Em v The Queen* (2007) 232 CLR 67. Counsel for the defence will be arguing that the judge should exclude the record of interview, and counsel for the prosecution will seek to counter this argument. *Before* submissions in relation to the admissibility of the tape-recorded interview are heard, counsel for the defence will be permitted to cross-examine the witness about the manner in which the witness conducted the tape-recorded interview. Defence counsel does not need to cross-examine the witness about the fact that no knife, bag, jacket or cash (over \$100) was found by police. Cross-examination in this case is an opportunity for defence counsel to adduce evidence that will support their submission that the record of interview is not admissible. It will take place in the absence of a jury on the *voir dire*.

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. Counsel may make *limited* reference (if necessary) to whether the probative value of any evidence sought

Date: 17 January 2014

STATEMENT in the matter of: JAMES SWIFTY		
Full Name:	Judy Dredd	
Home Address:	n/a	Phone Work: 0422 123 456
Occupation:	Police Officer	
Employer:	Australian Federal Police	
Work Address:	City Police Station London Circuit Canberra City	STATE: ACT

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.
2. My full name is Judy Dredd. I am 35 years of age and reside at an address known to Police. I am a Constable of Police, which is a position I have held for 12 years.
3. At around 12:30 p.m. on 17 January 2014 I was on foot patrol with Constable Badguy in the Canberra Centre. At 12:37 p.m. he received a call from despatch in relation to an incident. *(They had received a call from Sammy Teller reporting a robbery of an elderly lady at the Federal Bank on London Circuit. Sammy Teller had advised them that he had pursued the man and was keeping an eye on him in Garema Place.)*
4. As a result of the call, my partner and I immediately walked to Garema Place arriving at 12:40 p.m., where a person by the name of Sammy Teller identified himself to us. Teller pointed to a group of five individuals, two women and three men, standing together. Teller identified one of the males as the defendant. I would describe the defendant as around six foot, stocky build, dark olive complexion with short black hair. He was wearing a white singlet and a pair of black shorts and he had a distinctive tattoo of a lizard on his neck.
5. The defendant was advised that he was under arrest, and I conducted a search of his person, disclosing a wallet containing a \$100 note, and a set of keys. Constable Badguy and I then commenced to escort him to the watch-house at the city police station for processing.
6. After only a few steps, the defendant began to yell, 'You got nothing, you got nothing, you fucken coppers, why don't you just leave me alone?'. He began to violently resist, swinging his arms around dangerously. As a result of his struggling, Constable Badguy was forced to restrain him to the ground. The defendant continued to swear and spit at Constable Badguy and me.
7. A police van was called and by the time the police van arrived, the defendant had quietened down. As I escorted him to the van I heard Sammy Teller speak to the defendant: He said: 'You were casing the bank all morning. Admit it you bastard, you robbed Mrs Davidson didn't you?'
8. At the time, the defendant was looking squarely at Sammy Teller and then, after Sammy Teller finished speaking, the defendant suddenly started laughing.
9. Once we arrived at the police station, the defendant participated in a taped record of interview conducted by myself. It was not until the record of interview had commenced that I learned that the defendant was Aboriginal. He didn't want to speak with a lawyer so we proceeded with the interview anyway. I have typed up a transcript of that interview which has been provided along with the tape to the defendant.

Statement taken and Signature witnessed by me
on Monday 17 January 2014 at 10 a.m.

Taped Record of Interview between
James Swifty and Constable Judy Dredd
Conducted at Canberra City Police Station 4 p.m. Friday 17 January 2014

Constable Dredd: OK, I am going to ask you some questions in relation to an alleged robbery, at the Federal Bank, London Circuit at around 12:30 p.m. Friday 17 January 2014.

Defendant: When's that?

Constable Dredd: Today.

Defendant: I wasn't even near the bank Miss, what are you on about?

Constable Dredd: OK, just calm down, before I ask you any questions, I need to inform you that you do not need to say anything, however anything you say can be used in evidence against you, do you understand.

Defendant: Of course, I'm not stupid.

Constable Dredd: You are also entitled to speak to a legal representative or have one present, do you want a legal representative?

Defendant: No, you only need a lawyer if you've done something wrong. What the fuck is this, you cops are always picking on my mob.

Constable Dredd: Oi! There's no need for that language. What mob?

Defendant: My mob, I'm Aboriginal you idiot.

Constable Dredd: Oh, you are, are you? ... Well, did you finish school?

Defendant: Maybe, what of it? I told you Miss, I'm not stupid.

Constable Dredd: Well you look like the sort of fella who can stand on his own two feet. You can stand up for yourself right?

Defendant: I can look after myself.

Constable Dredd: So you won't be needing a lawyer, right? You're not guilty anyway?

Defendant: Yeah, now you're getting it, I'm not guilty. I don't need no lawyer if I'm not guilty.

Constable Dredd: And you won't be needing an interview friend now will you? Someone to hold your hand?

Defendant: I don't need no one to hold my hand!

Constable Dredd: OK, Can you please state your full name?

Defendant: James Swifty.

Constable Dredd: And your address, James?

Defendant: 3 Clive Street, Charnwood.

Constable Dredd: Your date of birth James?

Defendant: 3 April 1991.

Constable Dredd: What's your occupation James?

Defendant: I'm a fuckin' super model.

Constable Dredd: That must pay well.

Defendant: Yeah, I don't get outa bed for less than 10 grand.

Constable Dredd: Can you tell me your whereabouts this morning?

Defendant: Now let me see, Versace rang at about 7:30 and I was in the kitchen...then I walked to the balcony at about 7:30.

Constable Dredd: Look James, if you just cooperate we'll get this interview over and done with. What were you doing in Civic?

Defendant: Hanging round with me mates? We're tight you know.

Constable Dredd: That's funny. If you're so tight, why is it that I've got a statement from Trevor Gangland saying you robbed that woman in the bank?

Defendant: What, you're fucken kidding. Trevor never even seen me robbing that woman.

Constable Dredd: So you're admitting you robbed that woman are you?

Defendant: Fuck you. I'm not talking anymore. I want to see a lawyer.

Constable Dredd: OK, I think you're going to need one. The time is now 4:15 p.m. This taped record of interview is now concluded.

Defendant: Fucken dog ...

to be adduced by the prosecutor is outweighed by the danger of unfair prejudice to the defendant (s 137). Defence counsel must comply with the rule in *Browne v Dunn*.

INSTRUCTIONS TO WITNESS

You must read the record of interview carefully.

You will be cross-examined on what took place during the interview.

You think James Swifty is guilty. You also believe that good policing is about getting tough with criminals and sometimes, just sometimes, 'old school' police tactics are useful to get them to confess. You certainly don't like lawyers getting involved as they just get criminals off. You think you are pretty good at getting criminals to confess.