

CRIMINAL TRIAL THREAD SCENARIO

The fifth prosecution witness in the 'armed robbery' trial of James Swifty is an expert, Dr Reeba Science. The examination of this witness is to be conducted as a *voir dire* into the admissibility of her opinion evidence. The prosecution press the admission of the report of Dr Science as set out below in statement form, but the defence object to the report in its entirety.

INSTRUCTIONS TO COUNSEL

The examination in chief of Dr Reeba Science will take place as a *voir dire* into the admissibility of her opinion evidence. Therefore, no objection needs to be taken in relation to the evidence of opinion during examination in chief. Counsel is permitted to make objection to the form of questions bearing in mind s 37(1)(e) EA. Examination in chief should be designed to draw out the report and focus on the requirements of admissibility under s 79 EA. Counsel for the prosecution should imagine that the witness is indeed an expert (not a student) and ask questions that they would of an expert in order to draw out their expertise and explain their opinion and the basis for it.

Cross-examination by defence counsel, on the other hand, should be aimed at demonstrating that the evidence does not meet the s 79 test of admissibility and counsel must comply with the rule in *Browne v Dunn*. Both counsel should note down any answers that assist in demonstrating that the test in s 79 is or is not met.

At the conclusion of both examination in chief and cross-examination, counsel for the prosecution will be asked to make detailed submissions in relation to the admissibility of the evidence of opinion and counsel for the defence will make a contrary argument that the evidence of opinion, or at least some of it, is not admissible. Both counsel should refer to s 79 and the cases of *R v Hien Puoc Tang* (2006) 65 NSWLR 681 and *Morgan v R* [2011] NSWCCA 257.

INSTRUCTIONS TO WITNESS

Please feel free to make up details of your experience and the techniques you employed to identify Swifty. For example, you can talk about dividing the face up into parts, overlaying, etc. You can decide on which three points of facial conformity you used—the bridge of the nose, the jaw, etc. Your creative efforts should be consistent with your statement above.

You are not in a position to give full details of your techniques or identification protocols as you are currently seeking to patent them and have not yet made them public. You have not yet published a paper in relation to facial or body mapping techniques.

Date: 14 May 2014

STATEMENT in the matter of: JAMES SWIFTY		
Full Name:	Dr Reeba Science	
Home Address:	n/a	Phone Work: 0422 123 456
Occupation:	Consultant Forensic Psychologist	
Employer:	Self-employed consultant	
Work Address:	Institute of Forensic Science, Sydney	STATE: NSW
<p>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.</p> <p>2. My full name is Dr Reeba Science. I am 41 years of age and reside at an address known to Police. I am a self-employed consultant forensic psychologist, with offices at the Institute of Forensic Science in Sydney. I am currently specialising in facial and body mapping techniques and am seeking to patent my advances, in particular, in relation to body mapping. Face and body mapping involves combining the study of morphology, relative proportions, posture, gait, racial traits, distinguishing features or unique identifiers, and habitual characteristics. The application of face and body mapping techniques enables me to make a complete assessment of all of these characteristics to individualise and identify a person.</p> <p>3. Qualifications:</p> <ul style="list-style-type: none">• Bachelor of Science (Psychology) 1996, University of Western Sydney• Masters of Psychology (Forensic) 2000, Bond University, Queensland• PhD Psychology 2008, Monash University, Victoria. <p>4. Publications:</p> <ul style="list-style-type: none">• Reeba Science, <i>Facial Features and the Polygraph Test: I know When you are Lying without the Machine</i> (Bulwark Press, 2010).• Reeba Science, <i>The Anatomical Features of a Liar</i> (Bulwark Press, 2011).• Reeba Science, <i>Mapping the Criminal—Confessions without Words: An Investigation of Visual Records of Police Interviews</i> (Bulwark Press, 2011). <p>5. Experience: I have worked for 10 years with various policing agencies throughout Australia to digitally enhance and compare crime scene photographs with those taken of accused persons, recording and detailing similarities. I have appeared as an expert witness in seven trials where such evidence was admitted.</p> <p>6. Report in relation to the suspect, James Swifty: The Australian Federal Police supplied me with images of the defendant James Swifty taken after his arrest together with images recorded on the Federal Bank of Australia's security surveillance camera of the alleged robber at the time of the incident. In my opinion the images from the surveillance camera are insufficiently clear to identify the defendant without the application of facial and body mapping techniques. However, the images included both facial and bodily features capable of comparison. My opinion was sought as to whether the two groups of photographs depicted the same person.</p> <p>Through the application of techniques of comparison, and the enhancement and overlaying of the respective images, I was able to identify three points of facial conformity. In addition, through the application of body mapping techniques it is apparent that the groups of photos demonstrated a slight lowering of the left shoulder, which is a unique identifier. Taken together these points of conformity are sufficient, based upon my 'protocols', to positively identify the person represented in the surveillance photographs as James Swifty. In addition, the surveillance photographs show a bulge beneath his jacket in the region of his back pocket which is consistent with a knife being concealed in that location.</p>		

Statement taken and Signature witnessed by me
on Wednesday 14 May 2014 at 11 a.m.