

CRIMINAL TRIAL THREAD SCENARIO

We are now commencing the mock criminal trial of James Swifty. The first prosecution witness is Trevor Gangland, a friend of the defendant. Initially, it will be useful to refer back to Chapter 1 and review how students and teachers can use the thread trial in class or as a study device. Also, important introductory case material, including the indictment, should be reviewed at this point. The Crown Prosecutor will conduct the examination in chief of the witness seeking to adduce all relevant and admissible evidence going to proof of facts in issue in the case. Counsel for the defendant will make objections as necessary during examination in chief and then cross-examine the witness. Further important instructions follow the witness statement.

INSTRUCTIONS TO COUNSEL

Counsel for the prosecution must be prepared to make an application to cross-examine the witness in accordance with s 38 EA. This submission must be supported by reference to the relevant case law, including *R v Hogan* [2001] NSWCCA 292, and *R v Le* (2002) 130 A Crim R 44. Counsel for the defence must be prepared to respond to the application under s 38 and support the submission drawing on relevant case law, including *Hogan* and *Le*.

Defence counsel must be prepared to cross-examine Trevor Gangland using his statement if the witness gives evidence that is different from his statement, and that evidence does not support the defence case. Your cross-examination must comply with the s 43 procedure. Make a decision as to whether you wish to tender the document having regard to s 45 and s 46. Counsel for the prosecution should be familiar with these sections in case defence counsel fails to comply with them.

Both prosecution and defence counsel must be prepared to make and answer objections relating to relevance and to the form or appropriateness of opposing counsel's questions. Counsel may also make submissions in relation 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 (see s 137).

Date: 20 January 2014

STATEMENT in the matter of: JAMES SWIFTY

Full Name:	Trevor Gangland	
Home Address:	14 Ellis St Charnwood	Phone: 0422 123 456
Occupation:	Trolley Pusher	
Employer:	Chesworths	
Work Address:	Westfield Belconnen	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 Trevor Gangland. I am 23 years of age and reside at 14 Ellis St Charnwood. I am currently employed as a trolley pusher.
3. At around 11.00am on Friday 17 January 2014, I was hanging out with my girlfriend, Iya Heardim, and we met up with James Swifty in Garema Place. He was there with his girl, Jill Ted. There was also another guy there, Simon Noluck. I don't know him very well.
4. I've known James Swifty for approximately 8 years. We attended Charnwood High School together. He has a tattoo of a lizard on his neck. I would describe James as pretty solid, he's got dark hair and dark skin and he's about six foot 5 tall. I've always been a little taller than him. I often hang out in Garema Place with James. That's where all the action happens and it's a good place to sit and catch up. We sometimes even pick-up girls there. James is always whistling at chicks as they walk past. Sometimes we smoke marijuana together.
5. When I met up with James he was wearing a shiny red tracksuit top. We didn't do much, the five of us just sat around sharing smokes and talking shit. When we ran out of smokes, James said he would go off and get some. He didn't have any money so Simon lent him twenty bucks. He walked off in the direction of the interchange.
6. I don't know how long he was away, but James came back from the interchange. I don't remember if he had his red jacket on or not. He didn't seem out of breath or anything. It wasn't long after that the cops showed up. One of them pulled out a gun and told James to put his hands up. James put his hands up straight away, he seemed surprised. It was a bit scary. Those cops arrested James and took him with them. I never saw James with a knife.

**Statement taken and Signature witnessed by me
on Monday 20 January 2014 at 1:00pm.**

Further, both counsel should make sure they have an unmarked copy of the statement of Trevor Gangland in case it becomes necessary to show the witness a copy and tender it. Both counsel should be prepared to use a map of the area to take the witness through his testimony. Counsel for the defence must comply with the rule in *Browne v Dunn*.

INSTRUCTIONS TO WITNESS

Background: James is your good mate and you don't want to give evidence against him. However, you're not very smart and you think both lawyers are out to get him. Act slow and follow the instructions below.

When being examined by the prosecutor

You will give all of your personal information and background as asked, though don't volunteer any answers. Generally you should give the impression that you are not happy to be giving evidence, but you will reluctantly comply. However, when you are asked anything about whether James left the group you will insist that he was with you in Garema Place all day.

An application will be made by the prosecutor to cross-examine you—it will be successful. Once the prosecutor begins to cross-examine you, you will *reluctantly* agree with everything that is in your statement *except* you will now say that 'James walked towards the Canberra Centre, along city walk, and came back from that direction'—not the interchange. You will not say anything about James looking surprised.

When being cross-examined by defence counsel

If asked you will agree that:

- 1 you never saw a knife;
- 2 you didn't see James puffing or sweating or anything to indicate that he had been running;
- 3 you didn't see a handbag;
- 4 you didn't see any money;
- 5 James was not wearing a red jacket when he returned to the group;
- 6 James looked surprised when he was arrested.

But you will stick by your story that he walked to the Canberra Centre along City Walk, not the interchange, to buy smokes and that he returned from the direction of the Canberra Centre. *Only after you are shown your statement by defence counsel* will you agree that it says that James went in the direction of the interchange and came back from that direction. You will agree, if asked, that you made the statement when the events were fresh in your memory. You will ultimately agree that you now remember that he did walk towards the interchange and returned from the same direction. You do not recall whether James returned with cigarettes or not.