

## CRIMINAL TRIAL THREAD SCENARIO

The second prosecution witness in the 'armed robbery' trial of James Swifty is Sammy Teller, an employee of the bank and eyewitness to the incident when Dolores Davidson's handbag was taken from her inside the bank. 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. Counsel for the defendant will make objections as necessary during examination in chief and then cross-examine the witness.

### INSTRUCTIONS TO COUNSEL

Prosecuting counsel should consider whether to make an application for a view prior to the commencement of evidence in chief. If the choice is made to do so, the prosecutor will need to advance argument pursuant to the considerations contained in s 53. Defence counsel will need to consider their own position and be prepared to advance an argument against the prosecution application or consent to it. Either way defence counsel should be prepared to explain the reasons for the approach taken by reference to s 53.

Prior to Dolores Davidson having her bag taken from her, Sammy Teller had electronically created a record of the withdrawal of \$5000 in her account. A copy of Mrs Davidson's account has been disclosed with the brief of evidence provided to police (see the document below). During evidence in chief the prosecutor should seek to tender this document through the witness.

The prosecutor must seek to adduce evidence in relation to past robberies at the bank. The precise scope of the evidence that is proposed to be adduced is a matter for prosecuting counsel. Defence counsel must make a relevance objection in relation to past robberies at the bank, supported by submissions in relation to ss 55 and 56 and *Smith v The Queen* (2001) 206 CLR 650. Prosecution counsel must be prepared to answer this objection, supporting their response to the objection with submissions drawing on *Smith* and any other relevant cases.

Both prosecution and defence counsel must be prepared to make and answer objections relating to the form or appropriateness of opposing counsel's questions.

Date: 17 January 2014

STATEMENT in the matter of: JAMES SWIFTY		
Full Name:	Sammy Teller	
Home Address:	n/a	Phone number: 123 45678
Occupation:	Bank Teller	
Employer:	Federal Bank of Australia	
Work Address:	Level 1 Corner of London Circuit and Ainslie Ave Canberra City 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 Sammy TELLER. I am 28 years of age and reside at an address known to Police. I am a bank teller with the Federal Bank of Australia. I have held this position for almost seven years.</li><li>3. At 10:00 a.m. Friday 17 January 2014, I was working on the counter at the Federal Bank of Australia. It was a busy morning and there were a number of tellers serving customers. I noticed a male standing behind the customers lined up for service. He was standing near the counters where customers can fill in deposit and withdrawal slips. These are positioned close to the window. What I noticed initially was that he was not filling in any forms or bank documents and did not appear to be waiting for anyone, or to require service. I thought he looked suspicious.</li><li>4. There have been a number of robberies at the bank. A teller next to me was held up at gunpoint last year, and several customers have been attacked. On one occasion I remember there was blood all over the floor of the bank.</li><li>5. I would describe the male as around six foot, stocky build, dark olive complexion with short black hair. He was wearing a shiny red tracksuit top, the kind that zips up the front. It had black stripes down the arms, though I can't recall how many. He was wearing black shorts and he had a distinctive tattoo of a lizard on his neck. The male stood there for about 10 minutes before turning to leave the bank.</li><li>6. At around 12:30 p.m. after I had returned from a break, I opened up a counter to serve lunchtime customers. The bank was very busy. One of my first customers was Mrs Dolores Davidson. She is a regular at the bank. Dolores withdrew \$5000 from her account. I handed her a bundle of 50 one hundred dollar notes and saw her place the bundle in her bag. As she walked off I turned my attention to the next customer.</li><li>7. Moments later I heard a scream and heard someone say, 'Give me the bag, you fucken dog'. I looked over and saw Mrs Davidson on the ground and the man in the red tracksuit top running from the bank. All I saw was his back as he pushed between customers to get away. I saw the flash of something in his back pocket which looked like a knife. I raced around the counter and chased him. As I reached the entrance of the bank, I could see the man running through the lunchtime crowd down Ainslie Avenue. He turned left up City Walk, in the direction of Garema Place.</li><li>8. I lost sight of him but I continued to walk towards Garema Place. Once I arrived there I saw three men and two women standing around together. I immediately recognised the man I had seen in the bank earlier that morning, though now he wasn't wearing the tracksuit top. He was dressed in a white singlet and a pair of black shorts. The lizard tattoo was clearly visible on his neck.</li><li>9. I stood back some distance and called the police on my mobile phone. Two officers arrived within a couple of minutes. I pointed the man out to them and they arrested him.</li></ol>		

Statement taken and Signature witnessed by me  
on Friday 17 January 2014 at 5:00 p.m.

**Federal** Bank of Australia

Branch Name & Address

**Canberra City** Level 1, Corner  
of London Circuit and Ainslie Ave,  
Canberra City ACT

BSB 123-456

Account No.78-9011

*Account Name*

MRS DOLORES DAVIDSON

### **Account Summary**

Opening Balance                    + **\$5560.00**

Closing Balance                    + **\$1240.00**

**Details of Your Account – statement dated 1 Jan 2014 – 17 Jan 2014**

<b>Date</b>	<b>Description of transaction</b>	<b>Debt</b>	<b>Credit</b>	<b>Balance</b>
2014	<i>Statement Opening Balance</i>			\$5560.00
2 Jan	Aust Gov Pension		\$800.00	\$6360.00
3 Jan	Withdrawal – Canberra City Branch	\$300		\$6060.00
10 Jan	Withdrawal – Canberra City Branch	\$300		\$5740.00
16 Jan	Aust Gov Pension		\$800.00	\$6540.00
16 Jan	Withdrawal – Canberra City Branch	\$300		\$6240.00
17 Jan	Withdrawal – Canberra City Branch	\$5000		\$1240.00

*Statement printed on 17 January 2014 at 4:00 pm.*

For example, defence counsel may object to leading questions asked by the prosecutor. 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 (see s 137). Defence counsel must comply with the rule in *Browne v Dunn*.

Both counsel should be prepared to use a map of the area to take the witness through their testimony. The witness should be familiar with the map and be ready to make place and directional markings, etc. on the map as to what they saw.