

CRIMINAL TRIAL THREAD SCENARIO

The third prosecution witness is Iya Heardim and the Crown Prosecutor will conduct the examination in chief, seeking to adduce all relevant and admissible evidence from this witness going to proof of facts in issue in the case. Defence counsel must object where necessary during examination in chief and then will cross-examine the witness seeking to cast doubt on the accuracy and reliability of her evidence where possible.

INSTRUCTIONS TO COUNSEL

Counsel for the prosecution *must* endeavour to adduce evidence of the statements made by Noluck, 'Serves him right, he never did get me those fucken cigarettes'; and 'I saw James talking with some fella just before the cops showed up, it looked like he gave him a handbag or something.' This will be objected to on the basis that it is hearsay. Defence counsel must make and argue the objection to the evidence on the basis of s 59. Counsel for the prosecution must seek admission of the statement on the basis of s 65 and relevant case law. Defence counsel must be prepared to argue against the admission of the statement, addressing s 65 and any relevant cases.

Defence counsel must be prepared to cross-examine Iya Heardim using her statement if she gives evidence that is inconsistent with her statement. Your cross-examination must comply with s 43. Make a decision as to whether you wish to tender the document having regard to ss 45 and 46. Counsel for the prosecution must be familiar with these sections in case defence counsel fails to comply with the procedures.

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 (if necessary) 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 should make sure they have an unmarked copy of the statement of Iya Heardim 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 her testimony. Defence counsel must comply with the rule in *Browne v Dunn*.

Date: 20 February 2014

| STATEMENT in the matter of: JAMES SWIFTY | | |
|---|------------------------------|---------------------------------|
| Full Name: | Iya Heardim | |
| Home Address: | 10 Snowy Place Kaleen | Phone Work: 0422 123 789 |
| Occupation: | Hairdresser | |
| Employer: | Hotcuts | |
| Work Address: | Canberra Centre | STATE: ACT |
| <ol style="list-style-type: none">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 Iya Heardim. I am 19 years of age and I reside at 10 Snowy Place Kaleen. I am currently employed as a hairdresser at Hotcuts in the Canberra Centre.3. On 17 January 2014, I was working at Hotcuts when I got a call from my boyfriend, Trevor Gangland. We'd only been going out for a couple of weeks; I met him at a party. He said he was in town and asked whether I wanted to meet up with him and a few of the others. It was pretty slow at work so the manager said it was okay to take a break so long as I was back for the afternoon shift at 1:00 p.m. When I arrived, I met up with Trevor and James Swifty. James was there with his girlfriend, Jill Ted. Jill and James aren't together anymore. I don't recall what James Swifty was wearing at the time, though I think he might have had a red jacket on. James has a distinctive lizard tattoo on his neck.4. Simon Noluck was also hanging about with them. Simon died a couple of weeks after 17 January 2014. He was into some pretty heavy drugs, so were Trevor and James. Simon died of an overdose.5. We just sat around talking and watching people go by. I was mostly talking with Trevor. I don't talk to James Swifty much; he's got that dodgy look about him. I remember that some time later, I don't know how long it was, James left the group. I don't recall why he left or where he was going. I think he walked off towards the bus interchange. I don't know how long he was away, but it didn't seem like it was long. Just after he came back from the interchange, the police showed up and arrested him. He got pretty aggressive with them and I remember thinking that he must have been on drugs.6. After they took him away, the rest of us were talking about what had happened. I had to return to work because my shift was about to start, but before I did I remember Simon saying 'Serves him right, he never did get me those fucken cigarettes.' Then he said, 'I saw James talking with some fella just before the cops showed up, it looked like he gave him a handbag or something.'7. I don't recall ever seeing any cigarettes and I don't remember James talking to anyone who was not part of our group, but I remember what Simon said because he was so angry and upset. His eyes were pretty red, and he was speaking kind of slowly and deliberately. He looked like he might have been on something. After that I had to return to work. | | |

**Statement taken and Signature witnessed by me
on Thursday 20 February 2014 at 9 a.m.**

INSTRUCTIONS TO WITNESS

You don't remember much about the incident, except for what you have said in your statement.

You will change your evidence from that which appears in the statement in the following ways:

- *In evidence in chief:* You will now say that James was away from the group for 'a while'. You don't really know how long. You will also say, if asked, that you 'think he walked off in the direction of the Canberra Centre, along City Walk [that is, in the direction of the bank], and came back from that direction'. Again you are pretty hazy about what happened.
- *In cross-examination:* You will only agree that 'it didn't seem like long' or that he 'walked off' and 'came back' from the interchange *if* defence counsel shows you your written statement in cross-examination. Once they do, you will agree with what you said in your statement.

Feel free to attempt to give evidence about the drug taking of Simon Noluck, James Swifty or Trevor Gangland. You are no longer in a relationship with Trevor so you don't owe him any favours. If asked, you may elaborate in relation to incidents where you have seen them 'shooting' up, but stop if there is an objection to this evidence.