

CRIMINAL TRIAL THREAD SCENARIO

The sixth prosecution witness is Johnny Parkbench and his testimony and the truthfulness of it raise issues of credibility. The Crown Prosecutor will conduct examination in chief seeking to adduce all relevant and admissible evidence going to proof of facts in issue. Once examination in chief is completed, defence counsel will cross-examine the witness to cast doubt on his evidence with particular focus on his credibility as a witness given the various information that has been uncovered about this witness.

INSTRUCTIONS TO COUNSEL

Defence counsel has uncovered the following information about Johnny Parkbench:

- Johnny was evicted by 'Housing ACT' because investigations disclosed that there were often between 10 and 20 people living in his flat at any one time—police had also been repeatedly called to violent incidents involving excessive use of alcohol at the flat.
- Johnny has a history of criminal convictions. He has six convictions for burglary and theft, and two convictions for possession of illegal drugs. These offences were committed when he was in his twenties and in his early thirties. He has served time in gaol on two separate occasions in relation to charges of burglary.
- Those who know Johnny say he is now an alcoholic who spends whatever money he can get on grog—he has been admitted to hospital on numerous occasions as a result of injuries and incidents relating to his alcohol use.
- Johnny has been cut off social security payments in the past for knowingly making a false statement in relation to seeking work.
- A school report discloses that Johnny was considered to have oppositional defiance disorder and was constantly in trouble for lying.
- The word on the streets is that Johnny is doing a favour for the police in exchange for them dropping a charge against him. Everyone seems to know that he doesn't like Swifty.
- Johnny and Geoffrey Dibber-Dobber were sharing a drink on 2 April 2014 after Johnny had made his statement to the police. Geoffrey reports that Johnny said words to the effect, 'I never saw Swifty, those cops just told me it was him and I went along with

it. The cops said they would leave me alone now.' Defence counsel is in a position to subpoena Geoffrey Dibber-Dobber and bring him to court if necessary.

Johnny Parkbench frequently attends a homeless shelter near Civic and often speaks with a social worker there. The prosecution is in possession of the social worker's logbook and are in a position to call the social worker to give evidence of a statement made to him by Parkbench and recorded in the logbook.

Date: 2 April 2014

STATEMENT in the matter of: JAMES SWIFTY		
Full Name:	Johnny Parkbench	
Home Address:	No fixed address	Phone Home: N/A
Occupation:	Unemployed	
Employer:		
Work Address:		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 Johnny Parkbench. I'm 44 years of age. I'm homeless and I often sleep out in Civic. I've been homeless since I was evicted from my housing commission flat some time in early 2013. I spend most of my days hanging around in Civic, talking with people and scavenging for food. I know all the regulars—those who hang out in Civic and Garema Place.
3. I've known James Swifty for nearly a year now, I see him around all the time. He is pretty tall and strong looking. He's got dark skin and dark hair, and a tattoo of a lizard on his neck. Sometimes I ask him and his mates to help me out. Sometimes his mates help, but Swifty never gives me money or cigarettes—he just calls me an 'alcoholic' and tells me to 'piss off'.
4. At about 12:30 p.m. on 17 January 2014, I was sleeping across the road from the bank. It was pretty warm and I had fallen asleep under a tree on the grass on Ainslie Avenue. I woke up when I heard some yelling, and that's when I saw Swifty running past. He was running really quickly, but I saw his tattoo. I'd recognise him anywhere. He was wearing a red jacket and a pair of black shorts. He was carrying a black bag. It looked like a woman's handbag. A lot of people were yelling and I saw another bloke run past like he was chasing him. After that I went back to sleep until I was woken by some police who asked me if I had seen Swifty rob the bank. Those police took some notes in a notebook, then they went away.

Statement taken and signature witnessed by me
on Wednesday 2 April 2014 at 11 a.m.

28 March 2014

I saw Johnny Parkbench again this afternoon and he talked to me about a robbery. He said he had seen James Swifty again today and that the police hadn't got him for a robbery that took place at the Federal Bank. He told me he had seen Swifty run from the bank plain as day and that he saw his tattoo. I told Johnny to go to the police.

FURTHER INSTRUCTIONS TO COUNSEL

Counsel are required to consider and be in a position to make submissions in relation to ss 102, 103, 108, 192, and *R v Whitmore* (1999) 109 A Crim R 51, and the impact of s 60. Counsel will need to make decisions about what information to introduce in examination in chief and cross-examination, and consider objections with respect to all material. Defence counsel must comply with the rule in *Browne v Dunn*. This is particularly important in this case because the witness must be strongly challenged if the defence is to maintain its theory of the case. If the evidence of this witness is accepted beyond reasonable doubt, the prosecution case is essentially proved. Therefore, defence counsel will have to use at least some of the uncovered material in cross-examination to show that Parkbench is not a credible witness.

At the conclusion of cross-examination, the prosecutor will make an application to call the social worker to adduce oral evidence of a 'prior consistent statement' made by Parkbench. The prosecutor will then have to argue for admissibility of the social worker's evidence, having regard to ss 108 and 192, and *R v Whitmore* (1999) 109 A Crim R 51—drawing upon the case of *Nominal Defendant v Clements* referred to in *Whitmore*. Following oral argument by the prosecution, the defence may or may not choose to object to the calling of the social worker, depending on how they have chosen to conduct their cross-examination. However, defence counsel will be required to make submissions with respect to the same sections and cases to support their approach. Even if the prosecution is successful, the witness will not actually be called.

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, and whether it is hearsay or opinion evidence.

INSTRUCTIONS TO THE WITNESS

You had been drinking on the morning of the robbery. You don't remember how much, but it must have been a substantial amount of wine from a four-litre cask. You were sharing with some others, but you don't remember who they were. You will be very definite in your evidence about the fact that you saw Swifty and you will insist that you were able to identify him, despite him running past rapidly. You will agree with all of matters relating to your credit that defence counsel is aware of (if the questions are permitted to be asked) *but* you will try to explain or squirm out of the attacks on your credit in any way that you can think of.