



CRIMINAL TRIAL THREAD SCENARIO

The eighth and final prosecution witness is the alleged victim of the armed robbery, Dolores Davidson. Her testimony raises issues of identification evidence and some of the other rules of evidence considered throughout this trial thread scenario. 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 defence will object where necessary to the form and/or admissibility of the evidence of this witness and then conduct the cross-examination with the aim of casting doubt on the accuracy and reliability of her evidence.

INSTRUCTIONS TO WITNESS

Just prior to signing your statement you were shown a series of 10 photographs and asked whether you could identify any of the men in the photographs as the assailant. You were unable to. You were advised at the time that the robber might not be among the photographs, though you now know that a photograph of the defendant was included. When you are asked whether the man who robbed you is sitting in the courtroom, you will be very strong in identifying the defendant, saying something like 'That's him, I'll never forget his face' while pointing at the defendant.

INSTRUCTIONS TO COUNSEL

You can assume that there is evidence before the court, or adduced at the committal, to the effect that:

- Police attempted to locate enough people whose appearance was close enough to Swifty's to enable the conduct of an identification parade; however, they could only find seven such people. No parade was conducted.

Date: 17 January 2014

STATEMENT in the matter of: JAMES SWIFTY		
Full Name:	Dolores Davidson	
Home Address:	n/a ACT	Phone Home: n/a
Occupation:	Retired	
Employer:		
Work Address:		
<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 Dolores DAVIDSON. I am 78 years of age and reside at an address known to Police. I am retired and in receipt of an old age pension.3. On 17 January 2014, some time after 12 noon, I attended the Federal Bank of Australia on the corner of London Circuit and Ainslie Avenue, Canberra. I visit the bank each week but on this day, I went there to make a large cash withdrawal to help my son to buy a car. When I arrived the bank was very busy, so I had to wait in a line for some time. I was feeling quite tired but I was able to rest my weight a little on my walking stick.4. Eventually I was served by a nice young man who assisted me to withdraw \$5000 from my account. I carefully placed this money in my handbag, which is black. I was feeling quite nervous about having such a large amount of cash in my bag so I placed the strap of the bag over my shoulder and then held it against my body under my right arm. Then I commenced to make my way through the crowded bank.5. The next thing I recall is my handbag being roughly pulled away from me. I tried to hold on but the man pushed me away, causing me to fall. I remember him saying "give me the bag you fucking dog". Just before I fell I was able to get a look at his face. I would describe him as tall, with dark olive complexion. He had a broad nose and short black hair. He was practically snarling at me when I looked at him and his face is etched in my mind. I don't recall what he was wearing. By the time I had been picked up from the ground, and had my glasses restored to my face, the man had gone.6. Neither the bag nor the money has been returned to me.		

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

- Two weeks prior to the committal, police again sought to hold an identification parade. Officers visited Swifty at home to ask him to participate and he refused, slamming the door in their faces and saying, 'You blokes just won't leave me alone.'
- No approach was made to defence counsel in relation to the participation of the defendant in an identification parade.

Prosecution counsel *must* seek to have the witness give an in-court identification. This will be objected to by defence counsel on the basis of failure to comply with s 114 EA. Both counsel will need to make submissions in relation to s 114 and *R v Tahere* [1999] NSWCCA 170 and in-court identification generally. Counsel should consider 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).

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 and admissibility of any evidence that is sought to be adduced. Defence counsel must comply with the rule in *Browne v Dunn*.