



AUSTRALIAN ADVOCACY INSTITUTE

Case Study:

DPP v ELMO TELFANI

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Revised Prof. the Hon George Hampel AM QC

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Case Study: DPP v ELMO TELFANI

Instructions to participants:

The accused is charged with one count of aggravated burglary and one count of intentionally causing serious injury.

The Crown will call the following witnesses:

1. Herbert Von Naustraum - eyewitness
2. Jane Sledge – Forensic Scientist

The defence will call the following witnesses:

1. The Accused
2. Joy Jacob-Brown - Accused's de facto wife

You are to assume that the statements of witnesses not called have been admitted by consent and may be used in opening or closing addresses.

STATEMENT OF ELAINE BRIGGS

My name is Elaine Briggs and I live at an address known to police. I am a sales representative for a pharmaceutical company, Redrum Pty Ltd.

My mother and father own a yacht which they moor at the Elwood Marina. Occasionally I go and sleep on the yacht, particularly if I have been out at a work function nearby.

On 9th April, I had been at a cocktail party for some clients at a restaurant in St Kilda called "the Powerpoint". I returned to my father's yacht at the Marina at about 10.45 pm. About 15 minutes later, I walked into the small lounge at the bow of the boat and someone came up from behind and struck me on the head. I immediately felt great pain and collapsed. I did not see who this person was. I do not remember anything else after that moment. The next thing I knew I was lying in a hospital bed with a fractured skull. My vision was blurred and I was in a lot of pain.

I know a man by the name of Elmo. He is an acquaintance of my father's. He owns a small yacht also moored at the Marina. Many of the other people with boats there are very unhappy with my father and say that he owes them a lot of money. I don't really understand all the details but I think it's a combination of unpaid gambling debts and fees for work done on the Marina.

Signed

E Briggs

ELAINE BRIGGS

23rd April last year

STATEMENT OF HERBERT VON NAUSTRUM

My name is Herbert Von Naustraum and I am an airline pilot. I own a small yacht on which I spend a great deal of time. I sometimes spend the night with my girlfriend Carol Keane on my yacht which is moored at the Elwood Marina.

On 9th April, I went to the yacht with Carol at about 9pm. We had bought some take away food and a bottle of champagne, and we ate the food on the deck. Carol drank most of the champagne, and I only had one glass. I am very careful not to drink too much when I am working the next day.

At about 11pm, we were still out on the deck. I saw a man, about 1.8m tall wearing dark trousers, a dark top and black shoes. He had short curly hair, a curled moustache and glasses. I saw him walk through the gate almost opposite our boat and onto the pier. The area was well lit and from my boat I could see the pier and the carpark clearly. When I first saw this man he was about 8 metres away. As he stepped onto the pier, he paused, turned to his right to see if anyone was looking and then walked towards a boat moored about 6 boats away from ours and disappeared. A few minutes later I heard a female voice yell out. I didn't take much notice at the time as there are often parties going on other boats.

About 30 or 40 minutes later I saw the same male jog along the pier towards my boat from the eastern side of the pier and he passed directly in front of my boat. He ran into the carpark opposite the pier. He got into a red convertible car with the top down. When I saw him the second time I noticed that he was wearing dark trousers and a black shirt. His hair which I noticed looked wavy pulled back into a pony tail. His shoes were dirty white runners. He must have taken his glasses off. I also noticed that he was carrying a long stick or a bar in his left hand which he put in the back of the car before he drove quickly out of the carpark.

I remember his car distinctly. It was a beautiful new red SAAB convertible with the number plate "ELMO 1".

A few moments later, I heard a muffled voice say "help" in the distance. I walked up the pier towards where I thought the voice was coming from. I came to a boat owned by Jason Briggs. The light was on and I called out. I didn't get a response and I knocked on the door which was partly open, and heard someone moaning. I walked inside and found a young woman lying on the floor of the small bedroom area, her

head and face were bleeding and she seemed to be coming in and out of consciousness. All the cupboards and drawers in the boat had been pulled out and there were clothes and papers strewn all over the floor. I ran back to my boat and rang the police on my mobile phone.

I later told the police about seeing this man and his red SAAB

I attended the St Kilda CIB offices on 14th April to view a police line-up. There were 8 men in the line up and I picked out the guy third from the right as the man I'd seen going into the boat and jogging past me about 40 minutes later. He still had his hair in a pony tail and he must have shaved off his moustache. The man on the far left end looked somewhat similar, but he wasn't as tall and solid as the man I saw.

Signed 14th April last year

STATEMENT OF CAROL KEANE

My name is Carol Keane and I live at 1 Scoot Street, Mulgrave. I am a flight attendant for Pacific Air. My boyfriend is Herbert Von Naustraum, a pilot for the same airline.

On 9th April last year, Herbert and I were having dinner on his yacht at the Elwood Marina. It was a warm fine night and I started drinking champagne at about 9pm. By about 11pm I was a bit happy but not affected. While we were sitting on the deck we saw a dark haired man with a moustache wearing a black tracksuit and round glasses walk along the pier and go into one of the other boats. He was pretty tall, about 1.8m and had a strong build. He didn't speak to us.

I started to feel sick so I went inside to lie down. The next thing I knew Herbert was running back to the boat. He rang the police on his mobile phone. He said that some girl had been bashed.

On 14th April, I was asked to attend the police station at St.Kilda to look at 8 men in a line-up. It took me a while to be sure, but eventually I identified the man third from the right as the man I saw walk towards the boat at 11pm.

Detective Bright asked me after viewing the line up whether Herbert and I had discussed the man we had seen that night. I told them I couldn't really remember, but I didn't think we'd gone into any of the details. Herbert might have just said something about what he saw, but I couldn't really recall what.

Signed 14th April last year

STATEMENT OF DR SAMANTHA JOHNSON

My name is Samantha Johnson. I am a legally qualified medical practitioner and the senior Police Surgeon attached to the Victoria Police. My professional qualifications are: Bachelor of Medicine and Surgery, Fellow of the Royal College of Surgeons of Australasia and I have been the senior Police Surgeon for 5 years. I have attended over 200 crime scenes and have given evidence in all Victorian courts on many occasions.

At 2.15am on 10th April last year, I examined a woman who had been badly beaten about the head and neck. A summary of my examination and report are as follows:

- The woman, Elaine Briggs had been found unconscious on the floor of a boat at the Elwood Marina at approximately 12.07am. When I examined her at 2.15am she was conscious.
- She is aged 25 years, weighs 54 kilograms and is 1.3m tall.
- An examination revealed the following injuries:
 - abrasions and bruising to the back of the head
 - 3.5cm laceration to the centre of the scalp with underlying fracture
 - "tram track" bruising to the back of the neck
 - a deep 4cm long diagonal laceration across the lips and mouth area
 - 2cm laceration to the right side of the tongue

In my opinion, the injuries to the head and neck were consistent with blunt trauma, requiring the application of moderate force.

In my experience, "tram track" bruising usually occurs when an implement such as a rod strikes the skin a number of times.

The injury to the lips was consistent with the patient being struck to the mouth or falling onto a sharp edged object. There was significant bleeding associated with this injury.

The injury to the tongue may have been as a result of the patient biting down on her tongue as she was struck, causing bleeding. This blood, together with the blood from the injury across the lips, may have been substantially expelled by the patient. This can occur involuntarily when a person is unconscious.

When I saw the patient she still had quite a lot of blood around her mouth. The laceration to the tongue had stopped bleeding. I made the patient comfortable after suturing the lacerations to the head and lips and arranging for further tests and x rays.

Signed 21st April last year

STATEMENT OF JANE SLEDGE

My name is Jane Sledge. I am a Forensic Scientist employed by the Forensic Science Laboratory (FSL). I hold the degree of Bachelor of Science and I majored in forensic biology, immunology and biochemistry. I have been with FSL for 11 years. I have been authorised in the area of bloodstain pattern interpretation for 5 years and since then I have attended many crime scenes and given evidence many times regarding these types of cases.

On 12th April last year, I received a sealed plastic bag marked with the name "Telfani" which contained a pair of runners, a pair of black linen trousers, a black shirt and a pair of dark brown socks.

I examined each of these items for blood stains and made the following findings:

- 1 human blood spatter type staining on the front outer right leg of the trousers
- 2 human blood spatter type staining on the right toe of the right runner
- 3 a number of discrete droplet type blood stains near the rear waistband of the shirt, spaced at various distances. They were crusty, dried and globular, indicating they had not been completely absorbed by the fabric.

All the human blood found was the blood type of the victim, Elaine Briggs

In my opinion, the blood spatter type staining on the clothing was indicative of:

- a) Those items of clothing being adjacent to an impact between objects where at least one of the objects was bloodied; or
- b) Projection or spraying of blood. This can produce droplets of various sizes depending on the proximity of the objects; or
- c) A volume of blood being projected, dropped or dripped onto a surface and impacting onto that surface, in turn creating a spattering. If the objects were adjacent to this, spatter type stains may occur.

I was shown a golf club by Detective Bright. This object, which had been seized from the accused's house, was not bloodied and I did not detect any other foreign matter on the club such as human hair or skin. No further tests were conducted in relation to the club.

In my opinion, an elongated weapon such as a golf club or a bar, when it becomes bloodied, can project blood or blood droplets as it is swung through the air in an arc motion, in the deceleration stage of the swing. When this occurs, blood droplets can be projected behind the assailant and may fall on the rear of the assailant. This is called "cast off type blood droplet deposition". This happens because when a person is struck, the blood produced is still liquid and can form droplets from the motion and fly in the direction the weapon is moving. This is consistent with the type of staining found on the rear of the waistband of the shirt worn by the accused on the night of the assault.

The blood spatter type staining found on the accused's right jogging shoe (upper surface of the toe area) is indicative of some sort of impact involving liquid blood. The droplets were substantially smaller than 1mm in size and were typical of impact type spatter stains. Such small droplets do not travel very far (in absence of air resistance, not more than 1.5m). In my experience, when a person steps in blood they can create a spatter pattern on the shoe.

I found no other relevant stains.

Signed 26th April last year

STATEMENT OF SENIOR CONSTABLE JANINE BRIGHT

I am a Senior Constable attached to the St Kilda uniformed branch.

On the 9th April last year I was performing divisional duties in the St Kilda/Elwood area with Constable Loucas. At approximately 11.59pm I received a call from D24 to attend a yacht at the Elwood Marina, where a woman had allegedly been bashed. D24 had received 2 telephone calls informing them of the situation; the initial call from an unidentified male at 11.43pm, and the second call from a male called Herbert Von Naustraum at 11.51pm. Ambulances had been dispatched by D24 by the time I was contacted.

We arrived at the yacht moored at the Elwood Marina at 12.07am. The victim, later ascertained to be Elaine Briggs, was found lying on her back in the boat's small bedroom with her head towards the bedroom door. There was a blood stained white cushion under her head. She was breathing but appeared to be unconscious. There was a pool of blood around her head and there was a lot of blood around her mouth and on her face. Ambulance officers arrived a few minutes later and she was taken to the Alfred Hospital.

I noted that all the cupboards and drawers in the boat had been opened and their contents, including clothing and papers, had been thrown about the room.

After making certain enquires, I spoke to a person at the scene, Herbert Von Naustraum, who owns a yacht also moored at the Elwood Marina, who informed us that a man about 1.8m tall, wearing dark clothing, black shoes, with curly dark hair, a moustache and glasses was seen walking along the pier towards the boat where Ms Briggs was found at approximately 11pm. Von Naustraum saw the same man about 30 or 40 minutes later jog from the direction of the Briggs boat, past his boat, into the car park and get into a red convertible SAAB motor car, registration "ELMO 1". Von Naustraum again described this man as wearing dark clothing, with dark wavy hair pulled back into a short pony tail. He noticed the man was actually wearing dirty white runners. He was also carrying a stick in his right hand. A woman who was with Von Naustraum at the time the male was seen going into the boat at 11pm, confirmed this description.

I located the owner of the red SAAB, Elmo Telfani at his home in Port Melbourne at 1.25am. After introducing myself and Constable Loucas, I said:

"Elmo, I am here to investigate the assault of a woman named Elaine Briggs at the Elwood Marina"

He said:

"I know her. She's Jason's daughter"

I then cautioned him and indicated that I wanted to search his house. He told me to go ahead.

I located a putter lying across a chair in the upstairs study. I took possession of the golf club.

I asked Telfani if he had been at home all night. He said he had been to his yacht which is moored at the Elwood Marina at about 11.15 pm to collect his putter, and that he returned home at about midnight. I then asked him if he had changed his clothes since he had come home and he said no. I noticed a dark red spot on his right jogging shoe. I asked him to change his clothing and give me what he was wearing. He did so and I placed this clothing into a bag marked with his name (produced).

I asked Telfani to accompany me to the St Kilda CIB offices. He agreed.

I asked Constable Loucas to take a statement from Telfani's de-facto wife, Joy Jacob-Brown, who was at the house at the time we attended.

When we arrived at the CIB offices, a formal taped record of interview was conducted. Just prior to switching on the tape recording device, Telfani said to me:

"That girl's old man's a nasty piece of work. I'd certainly like to get my hands on him. I reckon he deserves everything he gets. Just ask some of the boys down there at the club how much money he owes me for work I did on his boat. We had a written contract, but he denies it. I bet he destroyed it"

I now produce the taped record of interview.

I later sent the clothing and putter belonging to Telfani to SFSL for examination.

On 14th April last year I was responsible for organising a line-up of 8 men to be viewed by Ms Keane and Von Naustraum. I had a bit of trouble getting it organised in such a short space of time. Apart from Telfani, there were only 2 other males with curly dark ponytails. Telfani is 1.85m tall and broad shouldered and wears his hair in a ponytail. All the others had lighter brown curly hair, but were much shorter and smaller builds.

The accused was standing third from the right. Ms Keane identified him after some 2 to 3 minutes. Von Naustraum identified the accused immediately. He did look twice at the man on the far left end who also had a dark wavy pony tail. He was not clean shaven.

Signed

15th April last year

RECORD OF INTERVIEW

Tape recorded interview between Detective Janine Bright and Elmo Telfani of 15 Garden Grove, Port Melbourne, conducted at St Kilda CIB offices on 10th April last year. Also present is Constable Sophie Loucas.

1 Q Elmo, do you agree the time is now 4.45am?

A Yes

2 Q What is your full name, address and occupation?

A Elmo Telfani. I am a Carpenter and my address is 15 Garden Grove, Port Melbourne

3 Q What is your age?

A 40

4 Q Are you an Australian citizen?

A Yep. Sure am.

5 Q I intend to interview you regarding the assault of a young woman called Elaine Briggs at the Elwood Marina a couple of hours ago. Before continuing I must inform you that you are not obliged to say or do anything but anything you say or do may be given in evidence. Do you understand that?

A Yes

6 Q I must also inform you of the following rights. You may communicate with or attempt to communicate with a friend or relative to inform them of your whereabouts. You may communicate with or attempt to communicate with a legal practitioner. Do you understand these rights?

A Yes

7 Q Do you wish to exercise any of these rights before the interview proceeds?

A No

8 Q Right. Were you at the Elwood Marina at about 11pm last night, being 9th April?

A Well, I arrived at the Marina at about 11.30 and was there for about 15 minutes.

- 9 Q What did you go to the Marina for?
A I needed to pick up my putter that was on my yacht which is moored there. I was playing golf early the next day, so I thought I should get it.
- 10 Q Do you know a person named Elaine Briggs?
A Well, I know her father. I've seen Elaine around the Marina once or twice.
- 11 Q Witnesses say that someone answering your description was seen going into the yacht where Elaine was found at approximately 11pm. What do you say to that?
A It wasn't me. I didn't get to the Marina until 11.30pm
- 12 Q Witnesses also say that someone answering your description was then seen running away from the Briggs' boat at about 11.30pm . What do you say to that?
A Well I was there around about that time but I didn't do anything wrong. I was just going to get my club.
- 13 Q Did you see anything unusual while you were there?
A Well actually, I did. I didn't say this to you before because I was scared you thought I'd done it. But I actually heard the woman moaning as I was leaving my boat. I went to see what was wrong and I went up to the Briggs' boat and the light was on. I saw that the door was partly open so I stepped inside. That was when I saw her lying there.
- 14 Q Then what did you do?
A Well, I saw she'd been beaten and I crouched over her. She seemed to be going in and out of consciousness. She was bleeding pretty badly around the mouth and she seemed to be choking. I noticed a small white cushion on the floor behind me. While I was still crouching down next to her, I reached over, picked it up and put it under her head. She was coughing and spluttering. The place was a mess; someone had gone through all the drawers. There were things everywhere.
- 15 Q Then what happened?
A I decided I should try and help her so, as I turned to leave, I rang 000 on my mobile phone as I was walking out. I told them there'd been an accident at the Marina and they needed to send an ambulance. I didn't say who I was and I hung up before they could ask me anything.

- 16 Q Why didn't you tell me that you had seen the injured woman in the boat before now?
A As I just said, I didn't think you'd believe me.
- 17 Q Just prior to starting the tape, you said to me, and I'll just read from my notes:
"That girl's old man is a nasty piece of work. I'd certainly like to get my hands on him. I reckon he deserves everything he gets. Just ask some of the boys down there at the club how much money he owes me. We had a written contract but he denies it. I reckon he destroyed it."
Did you say this just before the tape commenced?
A Yes.
- 18 Q You obviously know Jason Briggs?
A Yes. He also owns a yacht at the Marina
- 19 Q Have you had any dealings with him?
A He owes me a lot of money for work done on his boat. He's also a bit of a gambler. Owes me and quite a few others a quid or two. Some of the blokes down at the Marina are pretty keen to see him pay up. Why don't you speak to them?
- 20 Q Do you agree that this is the clothing you were wearing tonight when I first spoke to you?
A Yes.
- 21 Q We are going to have that clothing analysed. Do you also agree that this is the putter I seized from your study at your home earlier this evening?
A Yes it is.
- 22 Q I put it to you that you went to the Marina at approximately 11pm last night and entered Jason Briggs yacht carrying the golf club and struck Elaine Briggs to the head and neck a number of times causing serious injury, and then proceeded to empty the contents of the drawers and cupboards onto the floor?
A I went to the Marina, sure, but I did not hit that woman. I went into her yacht after someone else had been there.
- 20 Q I also put it to you that you went to the Briggs' yacht looking for money or papers?
A No. Not true.

21 Q You are going to be charged with aggravated burglary and intentionally causing serious injury. You are not obliged to do or say anything but anything you do say may be recorded and given in evidence. Do you understand this?

A Yes.

22 Q Do you wish to say anything in relation to the charge?

A No.

23 Q Do you wish to make a further statement?

A No. I've told you what I saw. I didn't do anything. You've got the wrong guy.

[The balance of the interview relates to formal requirements for fingerprints which were supplied by the accused]

Interview concluded at 5.15am.

INSTRUCTIONS FROM ELMO TELFANI

On 9th April last year my de-facto wife, Joy and I were at home watching TV. At about 11pm I realised I had left my favourite putter on my yacht, and as I was playing golf the following morning at 7.30am, I decided to go and collect it.

I left home at about 11.15pm and drove from my house in Port Melbourne to the Elwood Marina where I moor the yacht. I arrived there at about 11.30pm. I went to the boat, checked a few things on the boat, picked up the putter and left the boat at about 11.40pm. At this time, I heard someone moaning in the next boat. I realised it was coming from the Briggs' boat. I went onto the deck of the boat and saw a light on inside. I called out but no-one answered. I saw that the door was partially open, so I stepped inside and saw a woman lying on the floor of the bedroom. It was Elaine Briggs. I moved in closer and she was coughing and spluttering. I found a white cushion lying on the floor behind me, and I put it under her head. I didn't know what else to do. As I turned around to leave I decided I should ring an ambulance on my mobile phone. I dialled 000 and said that I didn't want to get involved, but there had been an accident of some sort on the Elwood Marina. I hung up before I was asked any questions by the operator. I ran to my car, which was parked in the carpark opposite the pier, threw my putter in the back seat and drove home.

When I got home, I thought about ringing the police, but I was scared they'd think I did it. I put my putter on the chair in my upstairs study. I noticed some blood on my left hand and I washed it off. I am right handed.

I drive a red convertible SAAB, registration "ELMO1".

I know Jason Briggs, Elaine's father, but not very well. He owes me and others at the club quite a bit of money for various things and he's a bit of a gambler.

I have never worn glasses in my life and I shaved off my moustache about 3 years ago. Most of the time I wear my hair pulled back in a short pony tail.

PROOF OF EVIDENCE OF JOY JACOB-BROWN

My name is Joy Jacob-Brown. I live at 15 Garden Grove, Port Melbourne, with my partner Elmo Telfani and our son Jack, who is now 6 months old. I am not working at the moment. I became ill during my pregnancy and had to leave my job. I am still not well enough to go back to work.

On 9 April last year, Elmo and I were at home. Elmo was playing his usual early start golf game the next morning with a friend of his, Nick Valdo. He was just talking about getting an early night because of the early start next morning when he remembered he had left his putter on the boat. He said he would go and get it. The TV was on and I remember Sport Tonight was on when he left. Sport Tonight starts at 11.00pm.

Elmo came home about 40 minutes later, it was close to midnight. I was still watching TV. He said he was going to bed and went upstairs. Shortly after that I turned the TV off. It was quiet and I could hear Elmo getting ready for bed. By that I mean I heard water running in the bathroom, and his footsteps in the dressing room, and moving about in the bedroom. Then I thought he must have gone to his desk upstairs to do some work as I heard the squeak of the drawer he keeps his papers in and the sound of him shuffling papers.

I must have fallen asleep. The next thing I knew the police were at the door asking for Elmo. They spoke to him upstairs, looked through everything, then took him away. One of them said that something terrible had happened at the marina and asked me what Elmo did that night and I said we had been at home, except when Elmo went out. She asked how long he was gone and I told her he was only gone for about half an hour. She wrote that down and asked me to sign it, which I did.

The statement doesn't say what time he went out because the police did not ask me. Elmo did not have a moustache then and does not wear glasses. The police didn't ask me about that either.

Signed *Joy Jacob Brown*

12 January, this year.

POLICE STATEMENT

Form no: VP307

My name is Joy Jacob Brown. I am 23 years old and live at 15 Garden Grove, Port Melbourne. I have lived here with my partner Elmo Telfani since we purchased the house last November. Elmo and I were at home tonight. Elmo went out for a short time. I do not wish to say anything more at this stage.

Signed Joy Jacob Brown

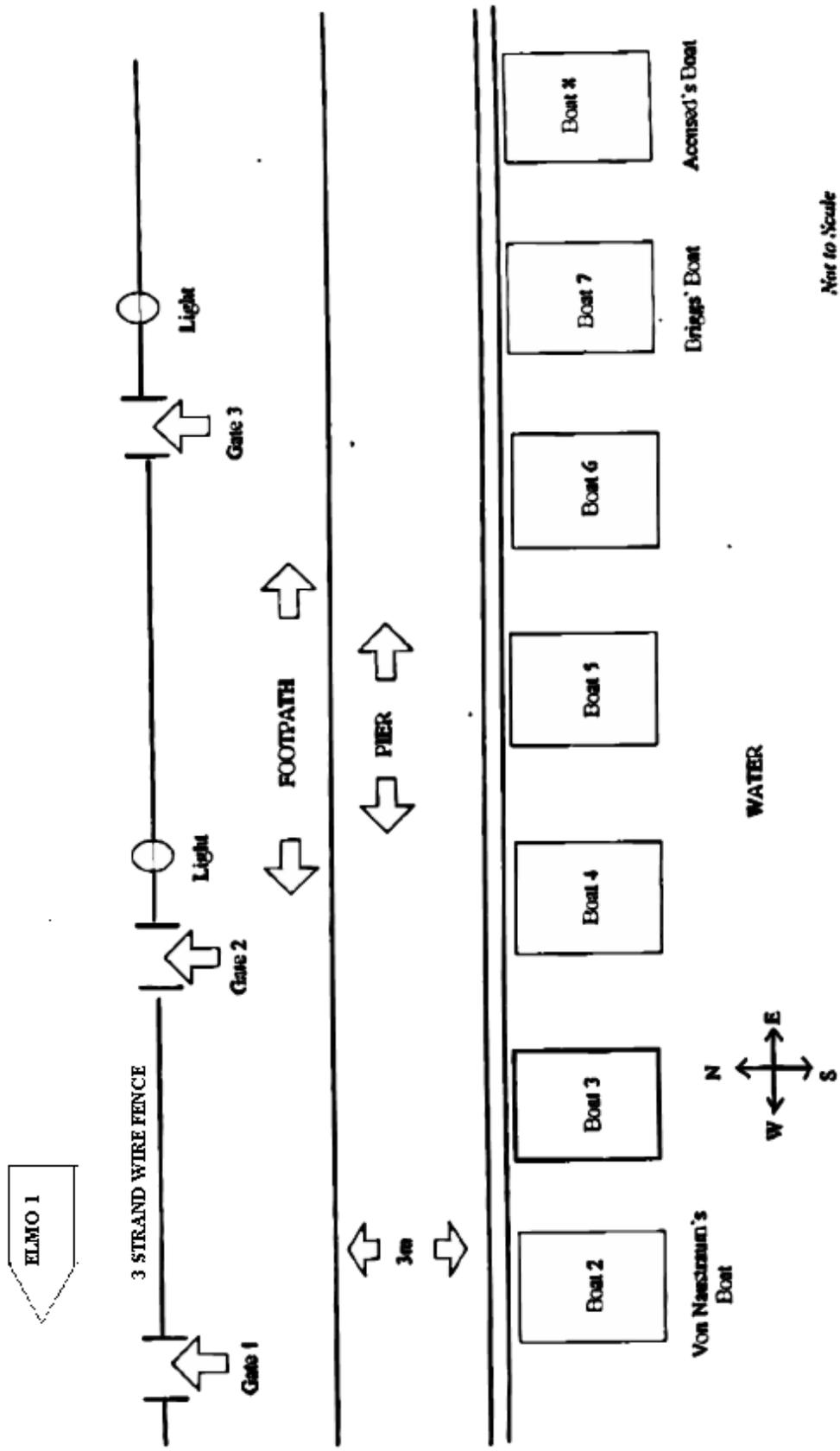
Joy Jacob Brown

Statement signed and acknowledged at 15 Garden Grove, Port Melbourne at 2.15 am, 10 April last year, in the presence of Constable Sophie Loukas.

Signed Sophie Loukas

Sophie Loukas

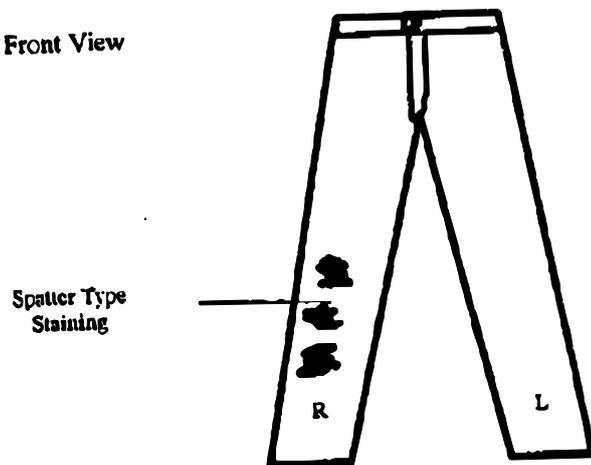
OPEN CAR PARK



A Shirt - Rear View



B Trousers - Front View



C Right Jogging Shoe

