



AUSTRALIAN ADVOCACY INSTITUTE

PORCINE

V

ROYAL BRIDGEWATER

GOLF CLUB

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Revised: by Professor the Hon. George Hampel AM QC 2003/2014

Australian Advocacy Institute

CASE STUDY



PORCINE v ROYAL BRIDGEWATER GOLF CLUB

You are sitting in your room at **2.00pm on a Friday afternoon.**

A telephone call announces the impending arrival of a client with a legal problem that requires urgent attention.

Mr Harvey Porcine, noted hotelier, arrives bearing some papers. He is slightly out of breath. You settle the client down and elicit the following information.

He instructs you to apply for an urgent injunction. You telephone the court and are told that a judge will be available for 5 or 6 minutes only. There is no time to prepare documentation.

Instructions from Mr Harvey Porcine

I live in a house at the address below and moved in two days ago. It is one of four low, single story houses which were completed six months ago. Two of the other three houses are currently unoccupied. My side fence abuts the rough next to the fairway leading to the fifth hole of Royal Bridgewater Golf Course. There are 18 holes in all. The fifth is a 200m fairway dog-legging to the right. The tee is approximately 70m from my unit, which is to the right of the fairway as you stand to tee off. The 'rough' consists of a 5m wide belt of long grass with sporadic undernourished and stunted ti-trees set at 50m intervals. None of them is more than 1.5m tall and they have very sparse foliage, so you can clearly see past them and over the top of my house to the 5th green which is on top of a slight rise. There are a series of small hillocks just beyond the houses that children use of the weekend to ride their bikes on.

I was standing in my backyard this morning at about 11.30am when I heard a whistling sound coming from overhead. This was followed by a dull 'thunk' as something hit a terracotta pot. The thing, which I saw to be a golf ball, ricocheted off the pot through a window and landed in my kitchen. I located the ball beneath my dented refrigerator door. The noise sent my prize Burmese cat, Roger, into quite a state. I was settling him down when I heard a voice saying "Can I have my ball back?"

I turned and saw a man in a yellow shirt looking over my fence. I walked out into my yard and opened the side gate to be greeted by a fellow who was wearing a yellow shirt, puce trousers and a green visor-type eye shade. He had an expensive-looking trolley with armour of golf clubs in an expensive leather bag trailing behind him. I was about to ask him about the ball when he called out "duck!" There was another whistling sound and a golf ball bounced off his golf-bag and sailed to my roof. A tile shattered. A second group of golfers had teed off on the 5th, not having seen the first group talking at my side fence. They too had been tempted to take a shot over my roof.

The man introduced himself as Louis Canze, the Secretary of the Golf Club and said "That was a close thing." I remonstrated with him about the two balls.

He said: "You were luckier than your neighbour. He was hit by a ball in his backyard about two weeks ago. He was taken to the hospital with a head injury. He gets out soon. We had a bit of

trouble with the balls leaving the fairway in the past because people try to take a short cut by driving across the crook of the dog leg to straighten it out and shorten the distance to the hole. Shortly after he was hit the club closed the fifth down and sought some advice about building a fence. I know that the Board members are still thinking about it but no decision has been made yet. I understand that there was a problem because an effective fence would disturb the habitat which is under an Environment Protection Order. Anyway, fences are expensive.”

I said: “Why was the fifth re-opened?”

He said: “We have a big amateur tournament starting tomorrow at 8.00am. It’s to raise money. I suggest you and the cat stay inside over the weekend.”

I said: “I’ve no intention of doing that. I’ll see my solicitor. You ought to close down until a fence is built. There will be kids riding on the hillocks on the weekend. They might get hit.”

He said: “We’re not going to do that. We’ve got amateurs coming from all over the country for this tournament. It’s a fund raiser to get Royal Bridgewater back on its feet. It’s a tradition that a prize be awarded for the best score on the fifth. That’s why many people come here. You could always buy the cat and yourself some hard hats.”

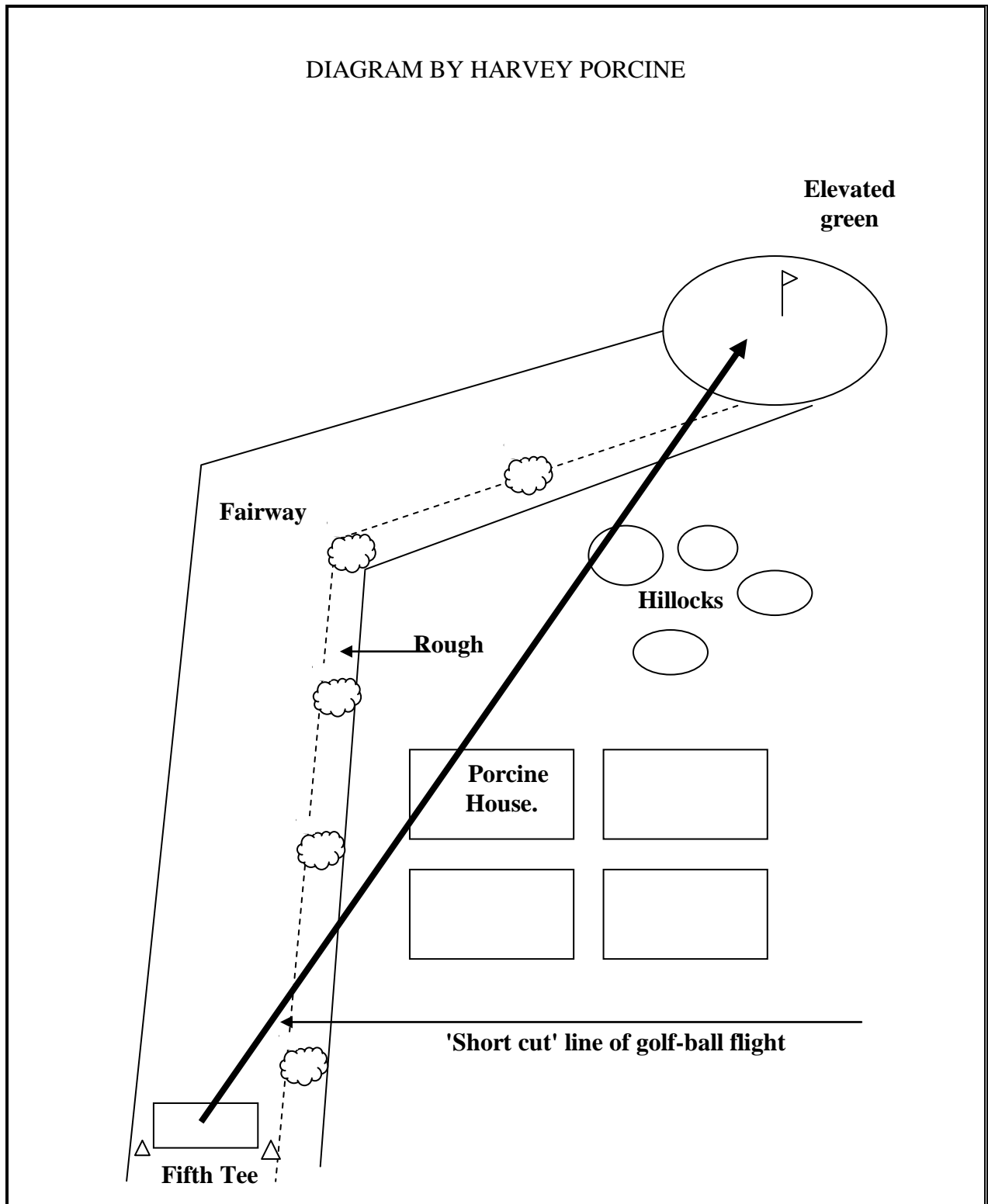
I said: “We’ll see about that.”

He said: “Do what you like but we’ll be playing off the fifth tomorrow”.

He then left. I kept the ball. I don’t see why I should have to leave my house or be imprisoned inside if I stay here. Anyway I’ve asked a few friends over to a Bar-B-Q. There are 17 other holes they can use. I want them stopped. I had no idea when I moved in that my neighbour had been hurt. There were no golf balls in the yard prior to the one this morning. I can’t afford to pay for any damage. I’ve just renovated at great expense. I have drawn a diagram - just a rough sketch- to make the position clear.

Harvey Porcine
4/4 Elspeth Crescent
Bridgewater

DIAGRAM BY HARVEY PORCINE



CASE STUDY



Australian Advocacy Institute

**Middleton v
Blanchard and Handy Bros.**

Opposed Injunction Application

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Revised by Professor The Hon. George Hampel AM QC.

INSTRUCTIONS TO PARTICIPANTS

IF APPEARING FOR APPLICANT – MIDDLETON

You have been briefed as follows:

- Apply for an urgent interlocutory injunction
- There has not been sufficient time to prepare affidavit material. You have therefore given counsel for the Lessor a copy of these instructions and will undertake to put these instructions on affidavit.

IF APPEARING FOR RESPONDENT – BLANCHARD & HANDY BROS.

You have been briefed as follows:

- Oppose injunction application

This morning's instructions from Jonathon Middleton:

I am a Lessee under a registered 5 year lease over a shop in the Swaying Palms Shopping Centre. The shopping centre is owned by Jane Blanchard and she is my Lessor. My lease has three more years to run. I sell surf-wear and sporting goods and my business has been exceptionally good from the day I opened the doors. It appears to me that the other shops are doing well. The shopping centre is quite old (I think it was built in the 1950's). Beside my shop is a hairdresser, a used bookstore, a second-hand furniture dealer and a food take-away.

Ms Blanchard approached me about three months ago to see if I would agree to an early termination of my lease and relocation to another shopping centre owned by Ms Blanchard, Mermaid Fair. As I mentioned, my business is booming so I declined her offer. She then told me that if I didn't agree to her offer, she would exercise the relocation clause in my lease. She is referring to clause 10.1 that provides:

Where the Lessor plans to construct additional buildings or extensions to existing buildings in the Centre or otherwise deal with the Centre, upon the Lessor giving (3) three months' notice to the Lessee, the Lessor may require the Lessee to surrender this Lease and vacate the said premises. Thereupon, the Lessee shall be offered a Lease in the Centre, or any comparable centre owned by the Lessor, for the balance of the term hereof upon the same terms and conditions as are herein contained.

She then served a notice pursuant to clause 10.1. I noted the date and it was exactly 89 days ago. I'm not a lawyer, but 89 days doesn't equal three months and anyway, when I signed the lease I thought that clause 10.1 only applied if the Lessor was going to renovate the existing Centre. I know from my discussions with Pritap Singh, the owner of the hairdresser shop, that Blanchard intends to demolish the Centre and put up a block of 24 units. Singh also told me that Blanchard is already marketing the block of units and has sold 8 off the plan. I understand that Pritap and the lessees of the other shops are not keen to relocate to Mermaid Fair.

I should have come to you earlier to see where I stood concerning the notice, but the day after I talked to Blanchard I left on a buying trip to Honolulu. An annual convention of the latest surf-gear is held there and I go every year. Blanchard knows this and I suspect that that's why she waited until the day before I left to serve the notice on me.

This year I also went to Los Angeles, Calgary, Toronto, New York, London and Munich on business. I just got back this morning. The reason I visited these other cities is that there has been a lot of interest from my customers in techno rap music provided that it is on vinyl. I signed major artists from each of these cities and intend using my shop and its customers to develop a low cost street-beach based distribution network for such music. In addition to its other advantages the current shop is particularly well-placed for this as it is just around the corner from the only vinyl pressing operation in Australia.

I checked in at the shop on my way back from the airport and was horrified to see that there was demolition machinery and workers outside the shopping centre in the carpark. My shop manager, Robin Sanders, told me that Handy Bros Demolition Pty Ltd was about to start

knocking down the centre. Robin had tried to get in touch with me but I was in transit. She phoned Blanchard and asked her to hold off until I got back and apparently Blanchard told her to 'get stuffed'. I immediately called Blanchard but her secretary informed me that Blanchard had left for the long weekend and would not be back until Tuesday. She also said that Blanchard had not left a contact number. I then called Blanchard's house but there was no answer.

I then went out to talk to the foreman of the demolition crew. He said his name is Harlan Handy and that Handy Bros. is his firm. (Apparently there are no 'Bros'; he just likes the sound of the name). I told him that he couldn't demolish my shop. He replied that I'd better start packing up my goods because they were starting demolition tomorrow morning. When I asked him to wait until I had spoken to Blanchard he said he had his orders and he was going to carry them out. I immediately left him and telephoned your office.

I also spoke to three of the other shop owners who were concerned and do not want to relocate. They said that if I can stop the demolition they will join me in the case against Blanchard.

I had a short conversation with my accountant who told me he would be prepared to give evidence at the trial and that it is unlikely that the damages I suffer from relocation can be easily assessed as compensation.

While I was waiting for you to arrive I drew a sketch that depicts the state of the Centre when I left to come over here. I've also brought a copy of the Notice that Blanchard served on me.

I want you to stop Handy Bros from demolishing the centre and my shop.

The next three months are my busiest time of the year and I will lose a substantial amount of money if I'm forced to relocate now.

Further, I do not want to relocate to Mermaid Fair. A competitor, "Shaggy Harry's Surf, Sea and Sun" is located in that complex. The Centre simply cannot support two surf shops. There is also a supermarket at Mermaid Fair. Two surf shops will also undermine my marketing strategy for the techno rap music as it creates the possibility of the proposed customer market aligning itself with particular stores.

Finally to get the techno rap concept off the ground I have borrowed heavily. I can service these borrowings based on historical income from the Swaying Palms shop, but could not if that income fell. I also have no capacity to borrow any additional funds and I would need to do this to fit out a shop at Mermaid Fair and do advertising about the relocation etc.

I think that the lessor knows that I will be making this application and will appear to oppose it.

NOTICE

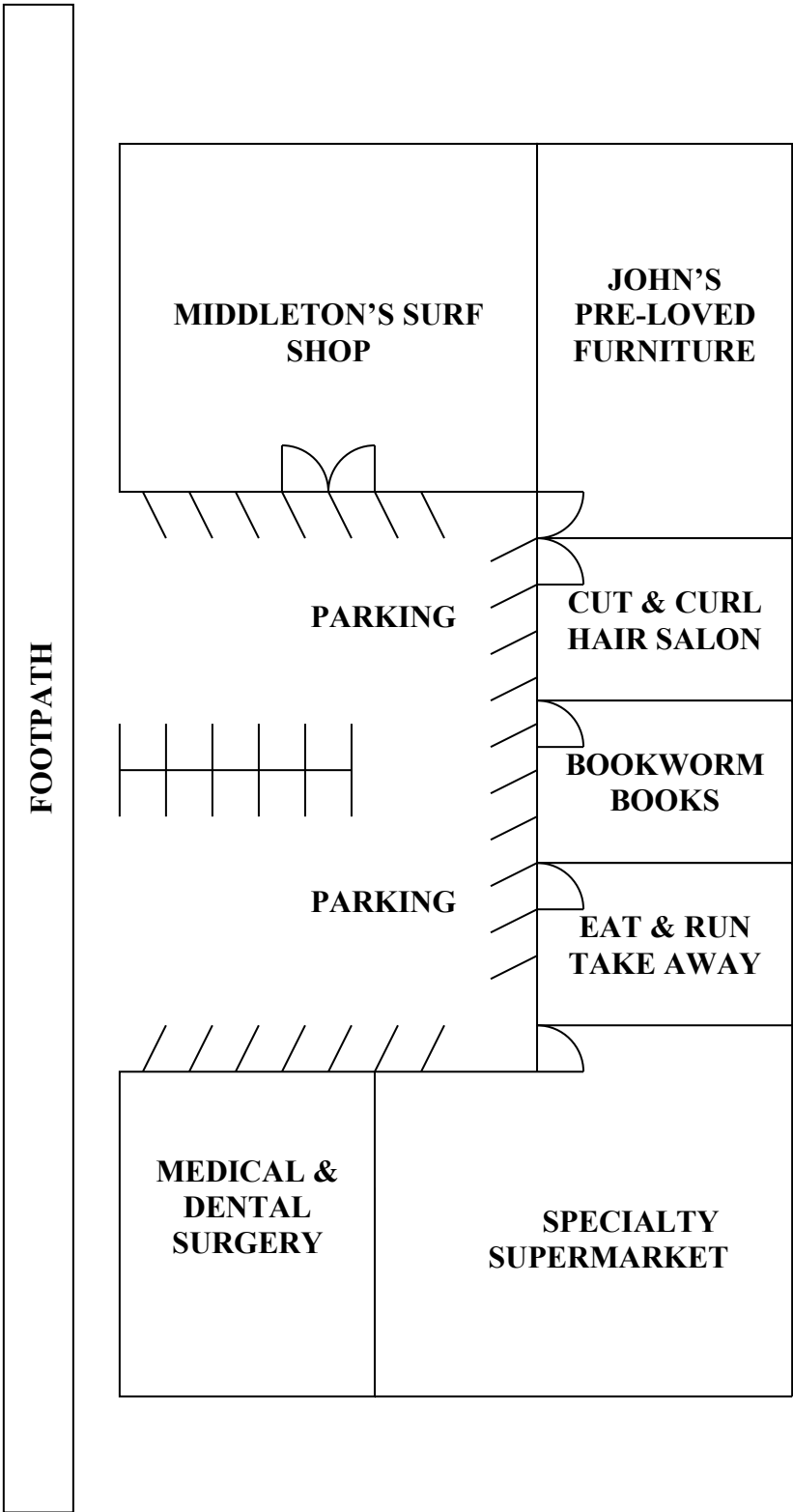
To: Jonathan Middleton
Proprietor, Middleton's Surf Shop
Swaying Palms Shopping Centre

You are hereby notified, pursuant to clause 10.1 of a Lease Agreement made between E Blanchard as Lessor and J Middleton as Lessee covering premises leased by the Lessor to the Lessee in the Swaying Palms Shopping Centre, to surrender the said lease and vacate the said premises.

E. Blanchard

E Blanchard
Lessor

Middleton v Blanchard & Handy Bros Demolition Pty Ltd





Australian Advocacy Institute

DPP v Evelyn Cannon

TRIAL

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[v. March 2020]

Instructions

On 6 October last year Evelyn Cannon was charged with conspiracy with Taras Shenko and others to traffic in cocaine and with possession of cocaine. Approx. 2 months after she was charged, the police delivered a hand-up brief to her solicitor with all witness statements.

She was committed for trial. She could not afford to be represented and witnesses were not cross examined. The prosecution brief is attached.

Attached also is Evelyn Cannon's statement made to her solicitor on 7 October. It was sent to the police in an attempt to persuade the prosecution not to proceed.

One week before the trial the statement made by Luigi Fiorelli was sent to the prosecution.

Taras Shenko, who was charged and bailed, has not been found and the trial will proceed against Evelyn Cannon alone.

Evelyn Cannon instructs that what she said in her statement to her solicitor is correct. She also confirms that, as far as she can recall, the record of interview is correct.

When she was asked in Q.10 if she knew Shenko, she became frightened but shortly after conceded that she knew him.

You are instructed to **prepare for the trial, both for the prosecution and the defence** in accordance with your allocated roles.

At a preliminary hearing the judge ruled that the evidence of the conversation between Constable O'Rourke and Shenko is not admissible.

STATEMENT OF CONSTABLE PAUL O'ROURKE

I am a Senior Constable of the Australian Federal Police stationed with the Drug Squad based in Central City.

As a result of information received about a likely drug drop in High St, Central City, near Luigi's Bar, I went to High Street, Central City, on surveillance duty.

At about 11.00 pm on 3 October, I parked my unmarked vehicle opposite Luigi's Bar. I alighted from the vehicle, walked north and took up a position opposite the telephone box which was on the other side of the street.

The traffic was medium and there were a few people moving about on the footpath.

At about 1.00 am on 4 October, I saw a person I now know to be Evelyn Cannon come out of Luigi's Bar. I had a good clear view of her and noticed that she was wearing a black overcoat, black stockings and ankle boots. She was about 170 cms. tall, of medium build and had short blond tipped hair.

She walked north along the footpath. She then entered the phone box and closed the door. It was a glass sided phone box so I had a clear view of her. She looked around furtively, reached into her large tapestry handbag and withdrew a small silver box and placed it underneath the phone stand. She then left the phone box.

She crossed High Street diagonally to where my car was and then walked south down High Street. I lost sight of her. As she was crossing the road I noticed that her hair was spiked on top, she wore large hooped earrings and red framed glasses.

I continued my surveillance and at 1.10 am saw a black Jaguar TS 0173 stop beside the telephone box.

A person I know to be Taras Shenko alighted from the Jaguar, went into the telephone box and appeared to remove the silver magnetic box. I arrested him and removed the box from the lining of his overcoat. In it was a Southern Central Station Locker key No 013.

I cautioned Shenko and said "We've got you this time Taras." He replied "You may have got me but you will never prove it. You missed Evie and she has the key to it all. If you ever find her she will give you an alibi you will never bust." I tape recorded this conversation.

I subsequently recovered a parcel from locker No 013. It contained a powdered substance which upon analysis proved to be cocaine. Its value is approximately between \$90,000 - \$100,000.

Next evening I went to High Street and prepared the sketch plan of the area. (Produced). Whilst I was there I noticed the waitress who was serving coffee and recognised her as Evelyn Cannon. She had changed her hair style, it was no longer spiked. I heard her speak to the proprietor Luigi Fiorelli. She said "Did you know Taras was busted last night just outside here." Due to the noise of the espresso machine I did not hear any further comments. I later ascertained from Mr Fiorelli that Evelyn Cannon lived at 13 Black Street, North City.

I had earlier obtained a photograph of Evelyn Cannon which has a notation on the back "January, last year".

I had also interviewed Peter Porter who identified the photograph as being of a woman like the woman who hired locker No 013.

At about 3.00 pm on 6 October I went to 13 Black Street, North City where I spoke to Evelyn Cannon. After I confirmed who she was, I said, "It is alleged that you were involved with Taras Shenko in a cocaine deal." She said, "You've got the wrong woman."

I asked her to come down to the station, where I conducted a formal record of interview which was tape recorded.

I produce a transcript of that interview.

Statement made – 5.30 pm on 6th October.

EXTRACTS FROM PAGES OF O'ROURKE'S DIARY

- 1/10 Informer (Code "Deep Throat") makes contact. Says cocaine deal is being made. Coke will be left in locker at Southern Central Station. Key to locker will be concealed in telephone box near Luigi's Bar in High Street in early hours of the morning in four days time.
- 3/10 **11.00 pm.** Park unmarked car in High Street on western side of the road opposite Luigi's Bar. Surveillance position - opposite telephone box.
- 4/10 **1.00 am.** Woman approaches phone box, enters, places container under phone stand, exits, crosses the road and walks away.
About 179 cms, medium build, wearing black coat.
1.05 am. Jag TS 0173 beside phone box. Male (Taras Shenko) enters phone box, arrested. Find container in lining of coat with locker key 013.
- 5/10 Attend offices of AFP. Access Shenko on computer. Evelyn Cannon listed as known female associate. Shenko suspect in large scale cocaine importing but never before arrested.
Given photograph of Cannon dated January.
Take statement from Porter. Porter identifies person in photo as that of Cannon.
Attend scene. Identify Cannon at Luigi's Bar. Overhear conversation.
- 6/10 Attend 13 Black Street, North City. Conversation with Cannon. Cautioned. Allegations put. Comment "I think you've got the wrong woman".
Taken to HQ. Further interview. Wearing glasses. Denials.
Short statement produced later.

STATEMENT OF PETER PORTER

I am in charge of the luggage lockers at Southern Central Station. These are available for rent each day for \$15.00. We keep records of the lockers used.

Some time after 9.00 am. on 3 October I rented the last available locker to a tall blonde woman with spiked hair. That was locker No 013.

She gave her name as Carmel and signed the book C. O'Caine, High Street, Central City.

I remember that she had large earrings which stood out and looked nice because of her short hair.

She was very friendly and chatty. She asked if there were more than one key to the locker. She said she had a Russian friend who might pick up the parcel.

I assured her that there is only one key per locker and we do not have access to the lockers once the key is given out.

I saw her place a brown paper parcel in the locker after she got the key.

On 5 October I was visited by Senior Constable O'Rourke. And I told him what happened on the 3rd.

He produced a photograph of a woman and asked me if she looked like the woman who rented locker 013. The woman in the photograph had large hooped earrings and short blond spiked hair.

I said that it did look like Carmel O'Caine.

Signed
P. Porter
5 October

Record of interview

Record of interview between Senior Constable O'Rourke and Evelyn Cannon, conducted on 6 October last year.

Interview commenced at 4.00 p.m.

Senior Constable O'Rourke asking questions. The interview was tape-recorded.

Q1 Your full name is Evelyn Cannon and you live at 13 Black Street, North City. Is that right?

A Yes.

Q2 How old are you?

A 22, nearly 23.

Q3 I wish to interview you in relation to a conspiracy to supply cocaine and to the possession of cocaine. Before I do so I must inform you that you are not obliged to say or do anything and that anything you do say or do may be given in evidence. Do you understand that?

A Yes. What's a "conspiracy"?

Q4 "Conspiracy" means an agreement. I must also inform you that you may communicate with a friend or relative to inform that person of your whereabouts, or a legal practitioner. Do you understand those rights?

A Yes.

Q5 Do you wish to exercise any of those rights?

A No.

Q6 Do you understand why you are here today?

A You asked me down, I don't know why.

Q7 It is alleged that you conspired with Taras Shenko to supply cocaine. What do you say to that?

A I had nothing to do with it.

Q8 Well, you were working at Luigi's on the 3rd and 4th of October, weren't you?

A Yes, I was.

Q9 I saw you leave Luigi's and enter the nearest phone box where you deposited a key to a locker which contained cocaine.

A You didn't see me. You've got the wrong woman.

Q10 Do you know Taras Shenko?

A Never heard of him. No wait, I think I know who you mean. I think he is a customer but I don't know him. I have had nothing to do with him.

- Q11 I heard you tell Luigi, your boss, that you knew that Taras was arrested outside the phone box.
A OK, I might have been set up.
- Q12 What did you do after you left work at about 1 am?
A I walked past the telephone box and got a taxi home.
- Q13 Do you own a black overcoat?
A Yes I do. I just got it. As a matter of fact, as I walked past the phone box I saw another woman in a coat just like mine, near the door of the phone box. It struck me because I thought that mine was a one-off.
- Q14 You were identified by a man at Southern Central Station as the woman who deposited a parcel which we found to contain cocaine.
A It wasn't me.
- Q15 I showed him this photo of you (shown to the defendant).
A Yes but I haven't looked like this for a long time! Not since May, when I got back from Bali.
- Q16 What do you mean?
A I changed my hairdo after I got back from holidays, months ago and I don't wear hooped earrings anymore. I swapped them for a Balinese painting.
- Q17 Do you wear glasses?
A Only for reading and sunglasses.
- Q18 Do you have a large tapestry bag?
A No. Only this normal sized, red leather bag.
- Q19 Tell me why you happened to be at the phone box just before Shenko turned up?
A I am not answering any more questions. I want to see my solicitor.

Interview terminated 4.40 pm

EVELYN CANNON STATES:

I am a waitress at Luigi's Bar. Two days before I was arrested I remember leaving the Bar at about 1.00 am. just before closing time. I walked North up High Street looking for a taxi. I saw a taxi pull up outside the 24 hour video shop on my side of the road. I walked quickly towards it. As I passed the phone box I noticed that there was a woman near the door of the phone box. There were other people about but I remember her because she was about my own height and wearing a black coat similar to mine. I continued past her and got the cab home to North City where I live alone. I did not go into the phone box or leave any box or key there. I know a Russian man Taras Shenko. He has been to the bar many times over the last three months before my arrest. He has bought me a few drinks there but I've never been out with him. The next day, all I heard was that Taras had been arrested.

I was afraid to tell the police more about me and Taras Shenko because they would associate me with him, as they have done.

I have no previous convictions and I deny that I was in any way involved with drugs with Taras Shenko.

Signed: **Evie Cannon**
 E. Cannon
 11.00 am, 07 October

LUIGI FIORELLI STATES

I am the proprietor of Luigi's Bar in High St, Central City. I employed an old girlfriend of mine, Evelyn Cannon, as a waitress in my bar 5 years ago. I have known her since school days and since she has been working for me we are just good friends. Evie had blond spiked hair on and off for ages. I didn't like it very much. She changed it when she got back from Bali. I complimented her on it and said it made her look more elegant. She did not spike it from then on.

On 5 October last year Evie was working behind the bar making coffees. She told me that she had overheard that a customer of ours, Taras, was arrested the night before outside the bar. She went on to say "I don't know what it was all about. You know he has been asking me out. He is Russian, but he speaks good English. I'm glad I kept away from him. He's obviously a bit dodgy". I said "You can't be too careful".

Later that night I spoke to a policeman who came into the bar. He asked me where Evie lived and I told him. He didn't ask me to make a statement.

I've been in trouble with the police twice. 10 years ago I had 2 marijuana plants in a pot on my balcony and had to do 50 hours community work for that.

Last year I was convicted of assaulting a customer who was drunk. The Magistrate realised I had to get rid of the customer and gave me a bond.

Statement made to Evelyn Cannon's solicitor two weeks ago

