



**AUSTRALIAN ADVOCACY INSTITUTE**

# **DPP v ELMO TELFANI**

## **TEACHING NOTES**

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**Revised by Professor The Hon. George Hampel AM QC 11 May 2009**



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### **DPP v Elmo Telfani**

#### **PROSECUTION CASE THEORY**

Telfani had a strong dislike of Briggs. He also had a strong motive to recover the contract which he claimed would evidence the debt owed to him.

He set off to the Elwood Marina where his boat was moored. His explanation that his purpose was to retrieve a golf club at that time of night does not seem feasible.

All the evidence points to him being on the Briggs' boat and ransacking it. His explanation as to how he came to get blood on his clothing does not sit well with the forensic evidence which makes it clear that the blood spots on the back of his shirt are of the 'cast-off' type. This is consistent with his using the golf club to strike Ms Briggs, who probably surprised him whilst he was searching for the contract.

The fact that there was nothing on the golf club suggests that it was thoroughly cleaned. This is consistent with the evidence of his wife that when he arrived home, he was heard in the bathroom with running water. He also went to his drawers where he keeps his papers.

Telfani's account that he came across the injured Ms Briggs and tried to help her does not sit well with his failure to give more particulars when he made the emergency phone call.

The identification evidence by Von Naustraum is reliable because he is a good observer, he was sober and he identified Telfani in the line up. This is so despite the apparent differences in the description of the man who arrived at the pier and the man who left and went to his car, (Telfani).

The alibi provided by his wife is uncertain in the timing relied on by her. It was also not mentioned to the police.

## **DEFENCE CASE THEORY**

Telfani left home at a time which would place him at the Elwood Marina considerably later than the time when Von Naustraum saw the man arrive and go towards the Briggs' boat.

Von Naustraum, who is interested in cars, did not notice Telfani's car at the time when he saw the first man arrive. Had it been there, it would have been obvious to Von Naustraum.

Telfani's account that he went to get his golf club and then onto the Briggs' boat when he heard moaning is feasible.

The blood on his clothing is consistent with his description of how he tried to help Ms Briggs. She was coughing and spluttering. When he turned to pick up the cushion, blood spots could well have been projected onto the back of his shirt.

If he were the attacker, he would not have called the ambulance. In fact, he called the ambulance from his own mobile. Understandably, he did not give his name as he feared being implicated.

The alibi relied on is certain as to time by reference to the television programme.

Von Naustraum's identification confirms that there were two different men there because of the different descriptions given of the man who arrived at about 11pm and Telfani who left and drove off in his car.

Cross examination of Von Naustraum should emphasize his good observation, clear view on each occasion, and the different descriptions given. This is not an identification by facial features except the moustache which was not present when Von Naustraum saw Telfani.

The identification in the line up is flawed, particularly because there were only two other men with curly dark pony tails.