Magistrates' Court (Committals) Rules 1999

S.R. No. 97/1999

FORM 8A

Rule 8.01

In the Magistrates' Court of

Victoria at Melbourne

Court Reference: W01708623

BETWEEN:

DETECTIVE SERGEANT BORIS BUICK

v.

FARUK ORMAN

NOTICE OF DEFENDANT IN RESPONSE TO HANDUP BRIEF

(clause 12(1) of Schedule 5 to the **Magistrates' Court Act 1989**)

TO: The Informant

AND TO: Office of Public Prosecutions

AND TO: The Registrar, Melbourne Magistrates' Court

TAKE NOTICE that the defendant -

1. intends to seek leave to cross-examine the following witnesses at the committal proceeding.

An issue to which the proposed questioning relates and a reason as to why the evidence is relevant to the issue are set out as follows -

a) Wendy PEIRCE

Issues

1. This witness's version of events is disputed.

2. Details of all telephone conversations or other conversations and meetings between this witness and the deceased in the time leading up to the deceased's death.
3. The nature of the relationship between this witness and the deceased prior to and at the time of the deceased's death.
4. Details relating to this witness's observations of the deceased's movement between 8.30pm and 9.15pm on the day the deceased was shot including but not limited to this witness's observations of the position of the deceased's motor vehicle in Bay Street and subsequently after the deceased had been shot.
5. Details of the nature of the relationship between the deceased and Frank Benvenuto at the time and prior to the deceased being shot.
6. Details of this witness's knowledge of the relationship between the deceased and Vince Benvenuto including the nature and extent of this witness's knowledge of the drug dealing between the deceased and Vince Benvenuto at and around the time the deceased was shot.
7. Details of the nature and relationship, to this witness's knowledge, between the deceased and Danny Knezevic prior to and at the time of the deceased's death.
8. Details of the conversation between this witness and Vince Benvenuto just after the death of the deceased in May of 2002.

Relevance

1. Success of the prosecution's case depends to a considerable extent on this witness's evidence.
2. Cross-examination is relevant to a fact in issue, namely whether the defendant did the act as alleged and thereby committed the offences as charged.

3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. Reconciliation of this witness's version of events with other evidence on the hand-up brief.

b) Andrew Gelston

Issues

1. Details of this witness's observations on Wednesday 1 May 2002 at approximately 9.15pm of a white Commodore "VL model or later model" parked next to vehicles outside the Telstra shop in Bay Street.
2. This witness's observations of people present in that vehicle.
3. Details of this witness's identification of photo number six from the photo board CIS 411 - 2007A allegedly being the vehicle he saw at Port Melbourne on 1 May 2002 at approximately 9.15pm.

Relevance

1. Success of the prosecutions case depends to some extent on this witness's evidence.
2. Cross-examination is relevant to a fact in issue, namely whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. Reconciliation of this witness's version of events with other evidence on the hand-up brief.
5. This witness can allegedly identify the vehicle in which the defendant, amongst others, was seated at the time that the deceased was shot.

c) Jane Walker

Issues

1. Details relating to this witness hearing three "loud bangs coming from behind [her]".
2. Details relating to this witness's observations and movements immediately prior to her hearing three loud bangs.

Relevance

1. This witness is allegedly present at the scene of the shooting of the deceased.
2. This witness can allegedly identify three loud bangs at approximately 9.05pm on 1 May 2002 the alleged date and time of the deceased's death.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. Reconciliation of this witness's version of events with other evidence on the hand-up brief.

d) Vicki Lambrou-Fernando

Issues

1. Details of this witness's position of her Honda Prelude motor vehicle at about 9.15 on Wednesday 1 May 2002 in Port Melbourne.
2. Details relating to this witness's alleged hearing what sounded "like a car exhaust backfiring".
3. Details of this witness's observation of a "guy hanging out of a car with a black balaclava on" and her observation of where this particular car was parked in relation to her on 1 May 2002.
4. Full details relating to this witness's alleged observations of what this person with the balaclava had in his/her hands as he was hanging out of the front passenger window of the vehicle in which he was seated.

5. This witness's full observations of what the "guy with the balaclava" did when he allegedly alighted from the blue/grey car.
6. Details relating to this witness's observation of the driver of the blue/grey car.
7. Details of this witness's observation of a "Silvery new looking sedan" which allegedly pulled up alongside a maroon car after the blue/grey car drove off.
8. Details relating to this witness's observation of the guy with a balaclava "shooting into the maroon car".
9. Details of this witness's call to 000 approximately 9.15pm on 1 May 2002.
10. Details relating to this witness's observation of photo board numbered CIS411-2007E.

Relevance

1. Success of prosecution case depends to a considerable extent on this witness's evidence.
2. Cross-examination is relevant to a fact in issue namely whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. Reconciliation of this witness's version of events with other evidence on the hand-up brief.
5. This witness allegedly witnesses the shooting of the deceased on 1 May 2002.

e) Ron Wieringa

Issues

1. Details relating to where this witness was located when he heard what he believed was three gunshots between 8.30pm and 9.30pm "in late April".

2. Details of this witness's observations of what he believes to be the victim's car on the evening in question.
3. Details of this witness's observation of a second car alleged to be a blue/grey VK Commodore or mid 80's Commodore on the evening in question.
4. Details relating to this witness's observations of all movements and actions of a person whom this witness saw get in and out of the blue/grey car.
5. Details relating to this witness's observation of the direction that the blue/grey car allegedly took following driving off.
6. This witness's observation of another car which subsequently parked right up next to the victim's car and which looked like a VN shaped Commodore.
7. This witness's observation of the person who walked up to the driver's side of the red car.
8. Details of this witness's observations of a booklet labelled "vehicle identification book - investigation into the death of Victor Peirce".
9. Details relating to this witness's observation of an A3 sheet handed to him by Detective Senior Constable Niblett identified as photo board number CIF411 - 2007b and his alleged identification of the image marked number 12.

Relevance

1. Success of the prosecution case depends to some extent on this witness's evidence.
2. Cross-examination is relevant to a fact in issue namely whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. Reconciliation of this witness's version of events with other evidence on the hand-up brief.

5. This witness can allegedly identify the vehicle and movements of people in and out of the vehicle which allegedly drove away following the shooting of the deceased.

f) Timothy Salisbury

Issues

1. Details of this witness's hearing of "four loud pops" and then "another two loud pops" while present at his partner's apartment on 1 May 2002 at approximately 9.15pm.
2. Details relating to this witness's observation of the VL Commodore and its movements subsequent to this witness hearing loud pops.
3. Details in relation to this witness's observation of a photo board of cars shown to him by police marked number CIS411 - 2007C and his alleged selection of photo number 11 as being the vehicle he saw in Port Melbourne in 2002.
4. Details relating to this witness's observation of a person who allegedly got into and out of the VL Commodore and any identifying features.

Relevance

1. Success of the prosecution case depends to some extent on this witness's evidence.
2. Cross-examination is relevant to a fact in issue namely whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. This witness can allegedly identify the vehicle in which the alleged assailant of the deceased took off following the alleged shooting of the deceased.

g) Matthew Salisbury

Issues

1. Details relating to this witness's observations of VL Commodore and its alleged position in relation to a red Commodore in Bay Street Port Melbourne on 1 May 2002 at approximately 9.00pm.
2. Details relating to this witness's observation of what looked like a male and his alleged position between the VL Commodore and the red Commodore.
3. This witness's observation of the VL Commodore's number plate.
4. Details relating to this witness's observation of a photo board labelled CIS411-2007F and his alleged identification of number 8 and the man getting to leave the scene on 1 May 2002.

Relevance

1. Success of the prosecution case depends to some extent on this witness's evidence.
2. Cross-examination is relevant to a fact in issue namely whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. This witness can allegedly identify the vehicle in which the assailant is alleged to have fled following the shooting of the deceased.
5. This witness allegedly observes the shooting of the deceased.

h) Ian Squires

Issues

1. This witness's position on 1 May 2002 at approximately 9.15pm whilst driving his silver 2002 VX Holden Commodore in Bay Street Port Melbourne.
2. Details relating to this witness's alleged hearing of three loud bangs which he assumed to be gun shots at that time.
3. This witness's observations of a light coloured Commodore including its make and model which was parked almost directly allegedly along side a red Commodore.
4. This witness's observations of a male who allegedly climbed into the rear passenger side of the light coloured Commodore including this witness's observation of that person.
5. This witness's observation of the direction that the light coloured vehicle took.
6. Full details relating to the actions of this witness following him pulling up alongside the "red" vehicle including any interaction or communication with the apparently injured person in the red Commodore.
7. Full details relating to this witness making a telephone call to police on the evening in question.
8. This witness's observations in general on the night in question.
9. Details relating to any items which this witness may have touched or been in contact with in the red Commodore on the evening in question and what he did with them. Details relating to this witness's observation of a booklet entitled "vehicle identification booklet - investigation into the death of Victor Peirce" dated 3 May 2002.

<u>Relevance</u>

1. Success of the prosecution case depends to some extent on this witness's evidence.

2. Cross-examination is relevant to a fact in issue namely, whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. This witness can allegedly identify the vehicle in which the assailant is alleged to have fled following the shooting of the deceased.
5. This witness allegedly identifies the getaway vehicle.
6. This witness interacts with the deceased subsequent to the deceased being shot.
7. This witness comes into contact with the vehicle in which the deceased was sitting after the deceased was shot.
8. This witness touches items in the vehicle subsequent to the deceased being shot.

i) Tracey Ray

Issues

1. Details relating to this witness's conversation to police in 2002.
2. Details of this witness's position relative to a maroon coloured sedan parked near an electricity pole on the evening in question.
3. Details of this witness's observation of the occupant/s of the car.
4. Details of this witness's observation of a silver coloured sedan which pulled up beside the maroon car.
5. Details of this witness's observation of the occupants in the silver coloured sedan.
6. Details of this witness's observations of the movements of the occupants of the silver car and of the car itself following

her hearing at least three loud bangs from the direction where the cars were situated.

7. Details of other observations of this witness relating to the events of the evening in question.
8. The nature and extent of the relationship between this witness and witness Wendy Peirce and her children Vinnie and Katie prior to and subsequent to the death of the deceased.

Relevance

1. Success of the prosecution case depends to a considerable extent on this witness's evidence.
2. Cross-examination is relevant to a fact in issue namely, whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. This witness can allegedly identify the vehicle in which the assailant is alleged to have fled following the shooting of the deceased.
5. This witness can allegedly identify the vehicle which was parked alongside the maroon vehicle in which the deceased was sitting prior to him being shot.

j) Katie Peirce

Issues

1. The nature and extent of the relationship between this witness and the deceased.
2. This witness's interactions with the deceased at approximately 9.00pm on 1 May 2002.
3. Details relating to the meeting between this witness, the deceased and Vince Benvenuto in January 2002.

Relevance

1. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
2. Reconciliation of this witness's version of events with other evidence on the hand-up brief.
3. This witness allegedly interacts with the deceased on the evening of 1 May 2002 allegedly just prior to the deceased being shot.
4. This witness allegedly is present when the deceased meets Vince Benvenuto in January 2002.

k) **Roberta Williams**

This witness allegedly gives evidence that Andrew Veniamin has confessed to the murder of the deceased. The transcript of that evidence has not been provided to the defence. We reserve our right to apply for leave to cross-examine this witness when we receive that transcript.

l) **Emma Mendelsohn**

Issues

1. This witness's observations of the position and movement of a parked car which was burnt red colour, a Commodore and a dark brown older model Commodore and their position in relation to one another on the evening of 1 May 2002 at approximately 9.05pm.
2. Full details relating to this witness's observations of the interactions if any between the occupant/s of the two vehicles she saw parked side by side on the aforementioned date.

Relevance

1. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.

2. Reconciliation of this witness's version of events with other evidence on the hand-up brief.
3. This witness allegedly observed the shooting and its aftermath of the deceased and observed the "getaway" vehicle.

m) [redacted]

Issues

1. Details of the nature and relationship between this witness and [redacted] and this witness and the deceased prior to [redacted] and the deceased's deaths.
2. Details of the nature and extent of the relationship between this witness and the defendant.
3. Details of the conversation between this witness and Andrew Veniamin and the defendant at the [redacted] on the corner of [redacted] referred to in paragraph 7 of this witness's first statement.
4. Details of all conversations between this witness and Andrew Veniamin and the defendant approximately 3-4 weeks after the meeting referred to immediately above and set out in paragraph 8 of the first statement of this witness.
5. Details of the relationship between this witness and Andrew Veniamin and the defendant at the convenient store at [redacted]
6. Details of the nature and extent of the interaction and conversation between this witness and Andrew Veniamin and the defendant at [redacted] allegedly the day after the deceased was shot.
7. Full details regarding the conversation between this witness and Andrew Veniamin referred to in paragraph 15 of the first statement of this witness. Details relating to the

formation of the friendship with the defendant and this witness.

8. Details of the telephone conversation between this witness and the defendant and the subsequent meeting between this witness and the defendant in [redacted] referred to in paragraph 13 of this witness's second statement.

9. This witness's observation of the nature and extent of the relationship between Andrew Veniamin and the defendant.

10. Full details relating to this witness's knowledge of Andrew Veniamin and the defendant "often steal[ing] the cars themselves and burn[ing] them afterwards".

11. Details relating to the alleged approach made by Andrew Veniamin and the defendant to this witness prior to the deceased being shot for help in locating the deceased.

12. Details relating to Andrew Veniamin and the defendant asking this witness for information regarding the whereabouts of the deceased referred to in paragraph 27 of this witness's second statement.

13. Full details relating to the "code" used when this witness and either Andrew Veniamin or the defendant spoke to each other.

14. Details of all conversation between this witness and Andrew Veniamin in late April and early May 2002 particularly relating to any conversations to do with the deceased.

15. Details relating to the alleged meeting at the 7/11 convenient store at [redacted] on or around [redacted] April 2002 at which the defendant may have been present.

16. Details relating to this witness's knowledge of the alleged plan by Andrew Veniamin and the defendant to kill the deceased.

17. Full details relating to the meeting with this witness and Andrew Veniamin and the defendant at a sushi restaurant in [redacted] and subsequently at [redacted] Street [redacted] allegedly the day after the deceased was shot.

18. Full details relating to what Andrew Veniamin allegedly told this witness about concerning the "murder" of the deceased the previous night.

19. Full details relating to the meeting which took place allegedly in [redacted] at a [redacted] between this witness and Andrew Veniamin and the defendant and subsequently at [redacted]

20. Full details of what was said by Andrew Veniamin and the defendant to this witness concerning "how they had murdered Peirce the night before".

21. Full details relating to conversations between this witness and Andrew Veniamin and the defendant in the weeks after the alleged murder relating to how Andrew Veniamin and the defendant had allegedly "burnt out the car they used in the Peirce murder".

22. Full details relating to the alleged meeting between this witness and the defendant near [redacted] referred to in paragraph 58 of this witness's second statement including the nature and details of the conversations between this witness and the defendant at that meeting.

23. Full details relating to a further alleged meeting between the defendant and this witness at which allegedly the defendant re-laid the defendant's involvement in the Peirce murder.

24. Full details relating to the meeting between this witness and the defendant at the [redacted]

[redacted] referred to in paragraph 60 of this witness's second statement.

Relevance

1. Success of the prosecution case depends to a considerable, if not almost wholly, on this witness's evidence.
2. Cross-examination is relevant to a fact in issue namely, whether the defendant did the act as alleged and thereby committed the offences as charged.
3. Cross-examination is relevant to an assessment of the accuracy and truthfulness of this witness's account.
4. This witness can allegedly identify the vehicle in which the assailant is alleged to have fled following the shooting of the deceased.
5. The defendant allegedly confesses to this witness about his involvement in the murder of the deceased.

n) Stephen Reidy (Detective Senior Constable)

Issues

1. This witness's involvement in securing the crime scene and operating the crime scene logs on the night and early morning of 1 May and 2 May 2002 following the shooting of the deceased.
2. Details relating to this witness's involvement in the conduct and investigation of the financial records, relating to the defendant and contact and communication with all witness relating to the provision of financial records in respect of the defendant.
3. Full details relating to this witness's investigation of intelligence holdings relating to contact and communication between the defendant and Andrew Veniamin prior and subsequent to the shooting of the deceased.

Relevance

1. Cross-examination of this witness is relevant to the assessment of the scope and breadth of this investigation.

o) **Detective Sergeant Boris Buick (Informant)**

Issues

1. The conduct of the investigation.
2. Contact and communication with all the witnesses.

Relevance

1. Cross-examination of this witness is relevant to an assessment of the scope and breadth of the police investigation.

Cross-examination of the aforementioned witnesses is justified on the following grounds:

- To ensure the prosecution case is adequately disclosed; and
- To ensure that the issues are adequately defined; and
- To ensure that a fair trial will take place if the matter proceeds to trial, including that the defendant is able to adequately prepare and present a defence; and
- To ensure that the interests of justice are served.

2. Requires the following specified items as listed in the hand-up brief in accordance with clause 6(1)(j), (k) or (l) of Schedule 5 to the **Magistrates' Court Act 1989** -

a) The following statements referred to paragraph 4 of the form 7A;

1. ADDICOTT, Jade
2. BURTON, Kenneth
3. CHAPMAN, Mark
4. COLEMAN, John
5. EROGLU, Bulent
6. FARRELL, Gary

7. GENTILE, Marilena
8. KIDD, James
9. KIRK, Paul
10. McWILLIAM, Greg
11. OAKLEY, Arthur
12. PERERA, Shana
13. TUNN, Edward
14. WALSH, Joanne

b) The following documents:

- Running sheets;
- Attendance register; None in existence
- Expert witness notes; Not in inf's possession.
- Witnesses prior convictions; Will be provided
- Notes (prosecution witnesses) by any prosecution witnesses (including draft statements or any similar document) in relation to this matter. Including but not limited to:

a. All notes of all police members, whether a witness at the committal hearing or not, taken in the course of or in connection with the investigation whether contained in diaries (official or otherwise), day books, files, field notes, surveillance logs/videos/photos, crime scene notes, exhibit logs, draft statements, working/rough notes, case notes or any similar document; Will be provided

b. All notes, draft statements, results and documents in relation to any forensic procedures, examinations or tests carried out during the course of this investigation that have not yet been provided in the hand up brief. Not in inf's possession.

c. All notes and draft statements of all prosecution None in existence.

witnesses used in the drafting of their statements.

d. Copies of any other statement (or draft statement, rough copies, notes or similar documents) made by any other witnesses or potential witnesses and not included in the hand-up-brief.

- Copies of all photographs taken in the course of or in connection with the investigation that have not yet been served with the brief of evidence.

~~No def's pow~~ served

- All Information Reports.

unprovided

- All search warrants obtained during the course of this investigation and exhibit logs in relation to every search conducted, that have not yet been served with the brief of evidence.

will be provided

- All listening device warrants obtained during the course of this investigation. All listening device material (and transcripts) obtained in the course of or in connection with the investigation.

The inf exercises PII & will not be provided

(TIs < LDs → Purana - No).

- All telephone intercept material obtained in the course of or in connection with the investigation.

As above

- All video surveillance footage (or audio surveillance footage) obtained in the course of or in connection with the investigation, that has not yet been served with the brief of evidence

As above

- All Telephone Subscriber Checks and Call Charge Records obtained in the course of or in connection with the investigation.

Will be provided

- Transcripts and recordings of all 000 calls made by any witness on 1 May 2002.

Will be provided → (eventually)

NB. We reserve the right to inspect the following items prior to the committal hearing: all items listed on the Exhibit Sheet but not provided on the hand up brief

to be produced for inspection or a copy given to the defendant at least two months prior to the committal hearing.

3. Is not prepared to proceed, or proceed further, with the hearing of the committal proceeding while a forensic procedure, examination or test described in the hand-up brief in accordance with clause 6(1)(j) of Schedule 5 to the **Magistrates' Court Act 1989** remains uncompleted.

- DNA analysis of material located on deceased's watch
- Hand writing analysis relating to deposits made into accused's bank account.

Dated: 17 September 2007

Calbally Rolfe
.....

Signed by: Calbally Rolfe