

Conviction Appeal Scenario

By Justice Buddin

You are briefed to advise and appear in an appeal against conviction for murder. You are provided with 4 lever arch folders of material which contain:

- six weeks of trial transcript including counsel's addresses
- summing-up
- sentence proceedings
- sentence remarks
- copies of documentary exhibits

You ascertain that the Crown case depended solely on the identification of your client as the person who was seen to stab the deceased by two strangers who made observations of the offender at night from a distance of 30 metres when his face was briefly illuminated by a street light. They nonetheless picked out the appellant from a photo-board line-up several months later. The appellant declined to speak to the police and nor did he give evidence.

The trial judge gave directions that fell well short of what was required by the High Court in *Domican v The Queen*. His Honour did however helpfully tell the jury that although it was a matter for them, it would be "an extremely dangerous step" for them to convict the Appellant. The jury nonetheless did so. No objection was taken to the trial judge's directions. The sentence imposed was decidedly generous.

You are also provided with an affidavit from the appellant's mother. She had left Australia before the appellant was charged (which occurred several months after the offence had been committed). She had been travelling in India and had only found out about his conviction and sentence upon her return to Australia. Whilst looking through her possessions she had located a photograph of a large gathering in the Barossa Valley which included not only her and other family members, but also the appellant. There was a handwritten entry on the back of the photograph identifying the date as being the same date on which the homicide occurred. The gathering was in the evening and the appellant's mother is certain that the date on the photo is correct although she does not recognise the handwriting.