

# Mock Trial Competition Case Materials ROUND 3 2022

## *State of WA v Campbell*

The Law Society of Western Australia is grateful to Mr Ashley Roberts of Hotchkin Hanly Lawyers for preparing these case materials.

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## Case summary

Mr Campbell has been charged under section 171(2) of the *Criminal Code* with creating a false belief.

Specifically, it is alleged that, on 20 June 2022, Mr Campbell said words to a commuter on a train travelling from Midland to Perth with the intention of creating a false belief that human safety is or may be endangered, that was of such a nature as would reasonably call for action by the Police Force or by emergency services.

Mr Campbell has already been charged with, and pleaded guilty to, failing to comply with a direction under section 86(1) of the *Emergency Management Act 2005* (WA). Mr Campbell failed to comply with paragraph 6 of the Covid Transition (Face Covering) Directions (No 8) by not wearing a face covering (i.e. a mask) in a public access vehicle (i.e. a train).

## Witnesses

There are four witnesses: two are called for the prosecution, and two are called for the defence. The prosecution will call Mrs Gertrude Adams and Mr Collin Baggins. The defence will call the accused, Mr Toby Campbell, and his sister, Ms Clara Campbell.

## The relevant section

Section 171 of the *Criminal Code* includes the following:

### 171. Creating false belief

(1) In this section —

*belief* means a belief or suspicion that —

- (a) an offence has been or is about to be committed;
- (b) human safety is or may be endangered;
- (c) human life has or may have been lost;
- (d) property is or may be endangered;
- (e) property has or may have been destroyed;
- (f) there is a fire that needs to be put out,

and that is of such a nature as would reasonably call for action by the Police Force or by emergency services.

(2) A person who does or omits to do any act with the intention of creating a false belief is guilty of a crime and is liable to imprisonment for 2 years.

Summary conviction penalty: imprisonment for 12 months and a fine of \$12 000.

There are three other subsections in section 171. They are not relevant.

## Legal notes

Here, the prosecution must prove the following beyond reasonable doubt.

1. Mr Campbell did something *intending* to create a belief.
2. The belief intended to be created was a belief or suspicion that human safety is or may be endangered.
3. The belief or suspicion was of such a nature that would *reasonably* call for emergency services.
4. The belief was false.

The defence accepts that, if the prosecution establishes the first three elements beyond reasonable doubt, the fourth element will be established. The fourth element therefore is not in dispute.

The paragraph of “belief” that the prosecution relies on is that in (b). Do not consider the others. Read the definition of “belief” above as if it says “*belief* means a belief or suspicion that human safety is or may be endangered and that is of such a nature as would reasonably call for action by the Police Force or by emergency services”.

Whether the belief is of such a nature as would reasonably call for action by the police or emergency services is an *objective* test. That is, would a reasonable person consider that they would need to call upon the police or emergency services because of their belief that human safety is or may be endangered.

Whether the accused intended to create the false belief is a *subjective* test. That is, did the accused themselves actually intend to create the false belief (not would a reasonable person think that the accused intended to create the false belief).

### A note on witness statements

Witness statements have been taken from the four witnesses and exchanged prior to the trial. The witness statements are included in these materials for trial preparation purposes. However, like with every mock trial, the evidence that is being led at trial is *viva voce* evidence: examination-in-chief will be conducted by leading oral evidence from the relevant witnesses. Examination-in-chief is not occurring by submitting the witness statement as an exhibit.

This means that, during the course of the trial, if Counsel is to refer to evidence of a witness, they should refer to the “evidence just given” or the “evidence heard during examination-in-chief”. Counsel should not refer the Judge or a witness to “their witness statement”.

Some of the only exceptions are, first, when the Judge calls on whether all the evidence has gone in after examination-in-chief and prior to cross-examination, and second, if the contents of the witness statement is being shown to the witness to show that the oral evidence the witness has given in examination-in-chief is inconsistent with their written witness statement.

## WITNESS STATEMENT OF GERTRUDE ADAMS

I, Gertrude Marelda Adams, of 33 Locke Street, Bassendean, say as follows:

1. I am 48 years old. I am an aged care worker at a facility in the north of Perth. I worked there for 6 years. I have been in the aged care industry for nearly 25 years.
2. I previously studied health sciences when I was at university. However, I changed pathways when my grades started to slip. I've always cared for the elderly, that was more of a passion for me than health sciences. My dad, who's a doctor, pressured me into taking up a degree that would lead into medicine. But I just wasn't very good at it.
3. I've had many challenges in my career. But there hasn't been any bigger challenge than the coronavirus pandemic. When COVID-19 hit Australia in 2020, we had to take extra precautions with the elderly. I took this very seriously and I made sure that my hygiene was in tip top shape every single day I went to work. My colleagues also wanted to take it very seriously and did the same.
4. Once vaccinations became available in mid-2021, things started to become a little easier, and everything began to return to normal. But I was still always cautious. Two or three jabs didn't ease my mind. I would always wear a mask whenever I left the house and I would sanitise my hands like crazy.
5. I've had COVID-19 twice. Once in February this year, and then unluckily I caught it again in May. The second time was worse than the first. I've always been really worried about getting it again.
6. I take the train into work, which is probably where I caught the virus from. I take the 7.50am train from Bassendean to Perth, and get off at Perth and catch a bus to work. I wear a mask on the train, which is required by the government. I mean, even if it wasn't required, I would wear one anyway. Unfortunately, people have become very relaxed about that requirement recently. It makes me anxious sometimes.
7. On Monday 20 June 2022, I caught the train from Bassendean as normal. It was quite busy that day and I felt very claustrophobic. I managed to grab one of the last seats, but was anxious that there were more stops to go until I got off, and the train would only get busier.
8. At Maylands Station, a man and a woman got onto the train and squeezed their way past some people towards me. I was sitting down and they were standing up, holding onto the handhold above me. The man was sniffing a lot and he coughed a few times. It sounded really chesty. I was worried he was showing COVID symptoms. When we were near Perth, I looked up and saw the man had pulled down his mask.
9. I was worried about the effect this might have on me and the other passengers. I said to him "Excuse me, can you please put your mask on?" He didn't pay attention to me. I said "You need to wear a mask, I work with the elderly and you sound unwell." He then turned to the woman he had come onto the train with and said something to her. Then he looked at me and said "I am unwell. I've tested positive."

10. This alarmed me. I turned to the man next to me and said “This man has COVID and won’t put his mask back on, please call the police.” He got on his phone and did just that. The police met us at Perth Station and arrested the man.

## WITNESS STATEMENT OF COLLIN BAGGINS

I, Collin Howard Baggins, of Unit 5, 14 Bravado Street, Midland, say as follows:

1. I am 32 years old. I work as a stockbroker in the Perth CBD. I've been in that job for 10 years.
2. I catch the train into work from Midland Station. It's a long way to Perth, about half an hour. But it's a necessary evil. I need to get to work somehow, and taking public transport is cheaper than driving. My partner and I are trying to save up for one of those nice new apartments in Mount Lawley, which would slash my commute by more than half!
3. Of course, you need to wear a mask on public transport still. I'm not a fan because my beard gets pretty itchy wearing one. But rules are rules I guess.
4. On 20 June 2022, I caught the train to work like normal. The one good thing about getting the train from Midland is that you're the first stop. So, you're able to get whatever seat you want. I like to sit in the middle of a carriage because most people bunch up at the door, and the middle of the carriage is usually quite free.
5. That day, I remember a woman getting on the train at Bassendean with one of the really serious face masks. This wasn't your ordinary cloth deal. This was definitely medical grade.
6. She made her way past the crowd of people near the door of the train and down toward me and sat down next to me. She was breathing quite heavily and seemed a bit nervous to me. I decided to just ignore her and so I put my headphones in and listened to a podcast.
7. We had about three stops to go when I noticed that the woman next to me was talking to a man who was standing in front of us. He wasn't wearing a mask. I thought that was pretty brave, because transit officers sometimes catch people out for doing that. I couldn't hear what the woman was saying because I was focussed on my podcast.
8. The next thing I know the woman next to me tapped my shoulder. I thought she'd just knocked into me. But then she started shaking my shoulder to get my attention. I took my AirPods out and the woman said to me "This man has COVID. Look he won't even put his mask on. Call the police".
9. I thought that was a bit of overkill. I mean, if there were transit guards at Perth, they would catch him if he wasn't wearing a mask. And no one else had really batted an eyelid at it. But, I could tell this woman was quite scared of getting COVID from the way she was behaving and I thought it was a bit inconsiderate to get on a train if you had tested positive. I mean, I certainly didn't want to come down with it.
10. So, I picked up my phone and called 000. I told the police that there was a man on the train to Perth, that he'd said he had COVID and he didn't have a mask on. We got to Perth Station and there were already transit officers and police waiting at the platform. The man got arrested.

## WITNESS STATEMENT OF TOBY CAMPBELL

I, Toby Campbell, of 38 Lake Circle, Maylands, say as follows:

1. I am 33 years old. I own a bar in Maylands with my sister. It does quite well, although we have hit a few rough patches because of COVID. When it wasn't lockdowns and restrictions, it's been staff shortages. April this year was difficult. I estimate around two-thirds of my staff got COVID that month, including me.
2. June was also difficult. Those who didn't come down with it in April started testing positive. I got nervous that I was heading for another period of severe staff shortages, and I was especially nervous because we had a big event at the bar scheduled for 18 June. Luckily, that was able to go ahead without any hiccups.
3. But then, when I got home that night, I started to feel a tickle in my throat. I thought, just my luck that I'm coming down with the virus again. My sister and I had arranged a meeting on the following Monday with someone we were hoping to be a third partner in our business. They owned a café in the CBD and wanted to transition into the small bar scene. We had arranged to meet them early on the Monday morning to discuss our potential partnership. I was annoyed that I would miss it if I tested positive. I texted my sister to let her know that I thought I was positive.
4. I took a RAT that night and it came up negative. I wanted to be safe than sorry, so I did the diligent thing and went down to get a PCR test the next morning. I got a text message later that night that said that I had tested negative for COVID-19 but I had tested positive for Influenza A. Although I was a bit annoyed that I was unwell, at least it meant I could go about my business as usual.
5. On the Monday, Clara and I decided to catch the train down to Perth from Maylands, since we live quite close to the station. I must admit, I haven't caught a train recently, and I completely forgot that you needed a mask. I'd walked halfway to the station when I remembered, and had to run back to get it. That put me in a foul mood because we were going to be late. Clara was also angry at me for that. When I finally got to the platform, she made a big deal about it.
6. The train arrived and I put on my mask. I squeezed myself past the crowd at the door down to the middle of the carriage. During the trip, I started getting some funny looks from people. I was a bit conscious that I was coughing a fair bit. I was also starting to get a bit of a runny nose that morning, which made me feel quite uncomfortable with the mask on; I was finding it quite hard to breathe. When we got closer to Perth, I pulled it down and hoped no one would notice.
7. A woman sitting in front of me then said to me "You need to wear a mask." I was a bit annoyed by this and I knew she was going to make a scene, which she did. She raised her voice at me and said "Put your mask on, I think you're unwell." I whispered "Watch this" to Clara. I turned to the lady and said "I am unwell. I've tested positive." I thought that would scare her a bit so she'd shut up and stop talking to me. I just wanted her to stop making a big deal.
8. I got off the train and there were cops there. They came up to me and I knew I'd be fined for not wearing a mask. But instead they told me that they had a reasonable suspicion that I'd breached isolation requirements. I told them that I didn't have to isolate because I didn't have COVID. They then charged me with creating a false belief.

## WITNESS STATEMENT OF CLARA CAMPBELL

I, Clara Cecilia Campbell, of 3 Feather Circuit, Maylands, say as follows:

1. I am 35 years old. I own a bar at Maylands with my brother, Toby. We've owned it for the last 4 years. Owning a bar has been my dream. I've worked really hard to make it in the small bar scene in Perth, and have even started dabbling in making my own gin.
2. The bar has struggled a bit recently because of COVID and lockdowns and restrictions. It seems like it was one thing after the other. If we weren't locked down, we could only serve 30 people at a time. Then once everyone was vaccinated, people started coming down with COVID and we had big staff shortages.
3. Thankfully, things have largely gotten back on track recently. We've started to hit another patch of staff shortages, because of a resurgence in COVID cases as well as the odd case of the flu.
4. Even we weren't immune. Toby messaged me after an event we had at the bar one Saturday night and said "I reckon I'm positive", which I took to mean that he'd come down with COVID again. I was a bit shocked, and also a bit anxious. If Toby had COVID at the bar, then he might have spread it around.
5. I was also a bit annoyed that it had happened just before we were about to have a really important meeting with a potential partner for the bar. But, of course, I was more worried about him coming down with the virus. I texted him back and told him to take a RAT. Later, he texted me and said "Phew. I'm negative." I was pretty relieved.
6. The next day, Toby and I were going to catch the train in to Perth from Maylands Station since we live quite close to the station. I was waiting for a while, and two trains had gone past before Toby arrived. He said "Sorry, forgot my mask. I had to run back." I said, "Thanks. Now we're going to be late you muppet."
7. Toby then did quite a chesty cough and was sniffing a lot. I said "You sound terrible," and he said "Yeah, I took a PCR and it turns out I *am* positive." I said to him "What! Go home! You have to isolate!" Then he smirked and said "Positive for the flu." I shoved him and said "Be more specific you donkey."
8. The train arrived and we got on and squeezed our way through the carriage to somewhere in the middle with a little less people. I stood in front of Toby looking down the carriage, so I couldn't see him. But, boy, could I hear him. He was still coughing and sniffing the whole way – it was so irritating. I was a bit embarrassed because I thought people might think he's got COVID. At least he was wearing a mask.
9. I then heard a lady say "Put your mask on". I wasn't paying much attention. Then she said it again. I then felt Toby lean closer to me and he said "Watch this, I'll just tell her the truth." I then heard Toby say "I'm positive" quite loudly. I turned around to have a go at him, and I saw he had his mask off. I couldn't believe it. I started working my way down the carriage so that people didn't think we were together.
10. We arrived at Perth and I got off ahead of Toby. I saw cops on the platform. Then, after a bit of a kerfuffle, I heard Toby say "What are you doing?" That's when I realised Toby was being arrested.