

Royal Commission into Institutional  
Responses to Child Sexual Abuse

MAY 2016

JURY REASONING  
IN JOINT AND  
SEPARATE TRIALS OF  
INSTITUTIONAL CHILD  
SEXUAL ABUSE:  
AN EMPIRICAL STUDY

Trial Scripts

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## Separate trial with one complainant (Timothy Lyons), medium case strength

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<sup>1</sup> With feedback from Jane Goodman-Delahunty, Judge Dina Yehia, a senior barrister, Vanessa Viaggio and Leigh Sanderson.

**Court Officer:** All rise.

*Everyone stands. Judge enters the court room and is seated.*

**Court Officer:** Please be seated.

*Everyone sits.*

### **Judge's initial remarks to the jury**

**Judge:** Good morning, ladies and gentlemen of the jury. Serving on a jury will be a completely new experience for some, if not all of you. It is, therefore, necessary for me to explain a number of matters to you.

The accused, Mr Mark Booth, seated before you, has been charged with two counts of sexual assault against the complainant, Mr Timothy Lyons. These two counts include: one count of act of indecency towards a person under the age of 16 years, namely Timothy Lyons and one count of sexual intercourse against a child above the age of 10 years and under the age of 14 years, namely Timothy Lyons.

Mr Booth has pleaded 'not guilty' to each of these charges.

You will be asked to decide whether Mr Booth, the accused, is guilty or not guilty on each of the different charges against him.

Please listen carefully to each of the witnesses as they give their evidence from the witness box. You should assess how each witness presents their evidence and how they respond to questions. This will assist you in deciding whether to accept all or only part of their evidence.

Each of you is now the judge of the facts. You may be wondering what my role is since I am also a judge. I am the judge of the law and I decide how the law is to be applied during the trial.

At the end of the trial, I will give you directions about the law that is relevant to this case. I will also explain how the law should be applied by you to the questions you have to decide.

I will now introduce the lawyers who appear in this case. The barrister on the right of the bar table is the Crown Prosecutor. She represents the State on behalf of the community and is referred to as Ms Crown.

The barrister on the left of the bar table is Mr Pearce. He appears for the accused, Mr Booth, as his defence counsel.

The Crown bears the responsibility to place sufficient evidence before you, the jury, to prove its case against the accused beyond reasonable doubt. Ms Crown will present the Crown's case first. Then Mr Pearce will present any evidence that the accused wishes to place before the court in his defence.

There is a very important difference between the role of the Crown and that of the defence. You will have heard of the rule that the accused is innocent until proven guilty. This means that the prosecution must prove the elements of each offence beyond reasonable doubt. However, the accused has no obligation, whatsoever, to prove anything. The defence does not have to call any witnesses, or offer any evidence. The burden of proof is entirely on the prosecution.

Your role is to not to try and determine where the truth lies. Your role is simply to decide whether the Crown has produced sufficient evidence for you to be satisfied, beyond reasonable doubt, that the accused is guilty of each of the counts of sexual assault against him.

Shortly the Crown Prosecutor will give an overview of the case that the Crown seeks to establish by the evidence it will present. The prosecution's opening address is intended to assist you in understanding the evidence as it unfolds. However, what Ms Crown will say to you is not evidence. It is no more than a summary of the Crown's case against the accused. You may address the jury, Ms Crown.

*Ms Crown stands.*

### **Prosecution's Opening Address**

**Ms Crown:** Thank you, your Honour. Good morning Ladies and Gentlemen. I act on behalf of the Director of Public Prosecutions. My role, as the prosecutor in this matter, is to present evidence against the accused, Mr Booth. My purpose in speaking to you is to outline what the Crown intends to prove in this case.

Shortly, you will hear how the complainant in this case was a young boy befriended by the accused when the accused was the coach of the under-12 boys Kogarah soccer team during the 1990s.

The testimony of the Crown's first witness, Mr Timothy Lyons, will reveal that he became one of a few special boys whom the accused took to McDonald's after soccer training on Saturday mornings. Timothy will also describe how Mr Booth was generally affectionate with all the boys. Mr Booth usually drove Timothy home and sometimes stayed to have a cup of tea with Timothy's mother on the back porch. Once when Timothy's mother was in the kitchen, Mr Booth joked about his sexual interest in Timothy's mother and then when Timothy indicated he was interested in the girl next door, Mr Booth asked him what he had "down there".

Between 1 and 31 December 1997, Mr Booth offered to look after Timothy for the three days his mother was in hospital for an operation. Because Mr Booth did not have a spare bed, Timothy slept in Mr Booth's double bed. Mr Booth committed an act indecency towards Timothy when Mr Booth stroked Timothy's penis and placed Timothy's hand on Mr Booth's penis. This incident is the subject of Count 1.

The Crown will also prove that Mr Booth had sexual intercourse with Timothy Lyons on the same day when he pushed Timothy onto his stomach then inserted a finger into Timothy's anus. This incident is the subject of Count 2.

The detailed evidence given by Timothy Lyons, who in the 1990s was a vulnerable boy under the age of 12 years, will prove beyond reasonable doubt that Mr Booth had the opportunity to commit these offences while Timothy was in his care and that he is guilty of each count of sexual assault against him.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. I will now ask Mr Pearce to address you on the matters raised in Ms Crown's opening address and any other matters to be raised by the accused. This opening is intended to assist you in understanding the issues in the trial and what the accused might say in answer to the Crown's allegations. But I need to remind you that, like Ms Crown's opening address, what Mr Pearce will say to you is not evidence. Mr Pearce.

*Mr Pearce stands.*

### **Defence's Opening Address**

**Mr Pearce:** Thank you, your Honour. Good morning Ladies and Gentlemen of the Jury, my name is Mr Pearce and I represent the accused in this trial. I would like to tell you something about the case you are about to hear.

There is no dispute that my client was the coach for the under-12 boys soccer team in Kogarah during the 1990s. There is also no dispute that my client knew Timothy Lyons. However, my client denies all the

allegations against him. The allegations made by Timothy Lyons are a figment of his imagination. My client, Mr Booth, was on friendly terms with the mother of Timothy Lyons. In fact, they were lovers for a short period of time, something that Timothy Lyons disapproved of. I will show you how he was clearly jealous of Mr Booth and wanted his mother's relationship with Mr Booth to come to an end.

I will also highlight the many inconsistencies in the evidence of Timothy Lyons. Not only did he not come forward for more than two decades, he was confused about key details such as the movie he watched the night he alleged Mr Booth sexually assaulted him and about the furniture in Mr Booth's apartment. In fact, when Mr Booth gives evidence, you will hear about my client's care and concern for Timothy and his mother. His testimony will show you that Timothy has fabricated the events said to constitute the assaults and that he intended to make trouble for my client because of his overwhelming desire for revenge against Mr Booth.

After hearing all the evidence, you will find that reasonable doubt does exist on each and every count and that my client is not guilty of the two counts against him.

*Mr Pearce sits.*

**Judge:** Ms Crown, you may call your first witness to the witness box.

*Ms Crown stands.*

**Prosecution:** I call my first witness, your Honour, Mr Timothy Lyons.

*Mr Lyons enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Lyons repeats the oath.*

### **Examination-in-chief of Mr Lyons**

Prosecution: Please tell the court your full name, date of birth, and age.

Timothy: My name is Timothy Dyson Lyons and I'm 29. I was born on 21 September 1986.

Prosecution: And what is your occupation and place of work?

Timothy: I'm a director of finance for Sydney Bank.

P: Can you tell the court when you joined the under-12 boys soccer team in Kogarah?

Timothy: It was just after my birthday in May 1997.

P: Was Mr Booth the coach of the team at the time?

Timothy: Yes.

P: How well did you know Mr Booth?

Timothy: Pretty well, I guess. I was one of the boys he took to McDonald's after training on Saturday mornings.

P: Were you a special group of boys or did he take anyone to McDonald's?

Timothy No, he seemed to have his favourites, I think.

P And how did Mr Booth behave with you and the other boys he took to McDonald's?

Timothy: Oh, he was just like one of us. Except he was the biggest, the loudest, the funniest. He was great fun. He used to pay for our lunch and muck around, you know, lots of jokes.

P How did he treat you?

Timothy: Fine at first. He was friendly and very touchy, feely, I remember that. Ruffling our hair or arm around our shoulders, that kind of thing. I loved it because my Dad didn't live with me and Mum.

P How did you get home after McDonald's?

Timothy: Well, Mum said I could only go if someone drove me home. So Mark offered to do that.

P How well did your mother know Mr Booth?

Timothy: She met him when he drove me home. Sometimes he stayed for a cup of tea.

P On those occasions, were you ever alone with Mr Booth?

Timothy: Yeah, when my mother was in the kitchen.

P Did anything ever happen when you were alone with him?

Timothy: Once when we were on the back porch. He was teasing me, he put a piece of ice down my shorts and said that my mother was pretty sexy and pointed to his crotch.

P What did you do?

Timothy I just giggled, I was really embarrassed.

P Then what happened?

Timothy He said that will happen to me when I start looking at girls. And I said, I already did and pointed to the girl over the back fence, my next door neighbour. He laughed and said I was too young for that. Then he pointed to my shorts and asked me what I had 'down there'.

P Can you remember when this occurred?

Timothy It was sometime in August I think. Just before or maybe after my Mum's birthday.

P What did you say?

Timothy: Nothing because Mum called out to us.

P Were you ever alone with Mr Booth after that?

Timothy: Yeah because he offered to look after me for three days when Mum had to go to hospital for an operation. It was in December, before Christmas.

P And did you stay at Mr Booth's place?

Timothy Yes.

P What happened when you arrived there?

Timothy He ordered a pizza and we watched a movie.

P On the TV?

Timothy Yeah, it was a video.

P Can you remember the name?

Timothy Ah ... yeah ... it was the second *Babe* film, *Pig in the City*.

P Are you sure about that?

Timothy Yes.

P And where did you sleep that night?

Timothy Well, I had to sleep in Mark's bed, he said.

P Did anything happen?

Timothy Yeah ... he started stroking my arms which I thought was a bit weird. But he said it would help me sleep because I was worried about my mother. Then he stroked my leg and after a while he ... ah ... he rubbed my penis on the outside of my underpants.

P Did anything else happen?

Timothy He took my hand and put it on his penis.

P What did you do?

Timothy I pulled my hand away, immediately.

P And what did Mr Booth do?

Timothy He just said I needed to calm down. So he pulled off my underpants and ... um ... rubbed my penis with some oily stuff.

P And how long did he do that for?

Timothy I can't really remember. I didn't understand what he was doing. I was crying and wishing my mother could come and get me.

P Then what happened?

Timothy He rolled me over onto my stomach and ... then ... um ... he pushed his finger into my backside.

P Your anus?

Timothy Yes.

P What did you do?



Timothy I yelled out cos it really hurt ... so he stopped.

P Did anything happen on the following nights?

Timothy No, because the next morning I ran back to my place. He drove round to get me later in the day. But I'd locked all the doors. I wouldn't let him in. I told him I'd ring the police if he didn't leave.

P And did you call the police?

Timothy No, I was too scared. I knew what had happened was wrong. I thought I'd be arrested.

P And did you tell your mother?

Timothy: She didn't believe me. She liked Mr Booth. I think they went out a couple of times. And she couldn't see him doing something like that. She said I was making it up to stop her from going out with him. She said I was jealous.

P And were you?

Timothy: A bit, yeah. But, not of him. I wanted his attention, not hers. She never understood that.

P And one other question, Timothy, do you know either of the other two complainants in this trial, Mr Justin McCutcheon or Mr Simon Rutter?

Simon No, I don't.

P: Thank you, Mr Lyons, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mr Lyons?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

### **Cross-examination of Mr Lyons**

D You've told us today that in 1997, sometime in December if I can be that vague, that Mr Booth sexually assaulted you?

Timothy Yes.

D And on that night you say you watched a movie?

Timothy Yes.

D And what movie was that?

Timothy It was *Pig in the City*.

D But in your statement to the police, you said you were watching *Hercules*.

Timothy I just got confused, I think.

D So what makes you so sure it was *Pig in the City*?

Timothy Well, um, because I remember Mr Booth was imitating Farmer Hoggett and we laughed about it.

D And what would you say if I said that *Pig in the City* wasn't released until December 1998?

Timothy But that's what I remember.

D So you couldn't have watched that particular movie that night.

Timothy I don't know ... maybe it was *Hercules* ... I can't be sure now.

D I see. And where did you watch this movie?

Timothy On a TV.

D In Mr Booth's bedroom?

Timothy Yes.

D What if I was to say to you that in 1997 Mr Booth didn't have a TV in his bedroom?

Timothy Well, I remember watching a movie in his bedroom that night.

D You're sure you watched it on a TV?

Timothy Yes!

D There's no need to get upset, Mr Lyons.

Timothy I know we watched a movie that night.

D But you're not even sure what movie. And now you say it was on a TV in Mr Booth's bedroom.

Timothy Yes.

D Where was the TV located?

Timothy On top of a chest of drawers.

D I see. And what would you say if I told you the only furniture in Mr Booth's bedroom was a bed and a bedside table?

Timothy No, no, that's not right. I mean ... hang on, he had two places.

D I beg your pardon?

Timothy We had to go to his other place, it was a sort of townhouse, cos he'd left his wallet there. And that's where we had pizza and watched the movie in his bedroom.

D Are you making this up?

Timothy No, ask him, ask Mr Booth about his other place.

D This is the first I've heard about a second house. Why didn't you say this earlier?

Timothy It didn't occur to me, I wasn't asked specifically about which house.

D But it's crucial information that you haven't raised until now. This is very curious, Mr Lyons.

Timothy Only because of the TV.

D And you are absolutely sure you watched a movie that night?

Timothy Yes!

D You've also told the court today that you reported these events to your mother when they occurred in 1997

Timothy Yes.

D She didn't believe you, did she?

Timothy No.

D She didn't believe you because you'd made it up.

Timothy That's not the reason at all. She liked Mr Booth because they went out together a few times.

D You made up the whole story because you were jealous of Mr Booth. You weren't the centre of attention any more, were you? And that's what you wanted, for things to go back to just you and your Mum.

Timothy That's not true.

D Are you on talking terms with your mother, Mr Lyons?

Timothy No, not really.

D And why is that?

Timothy We argue, that's all.

D Argue? About what?

Timothy I don't know, just stuff.

D Because of Mr Booth, isn't it?

Timothy No.

D Are you lying to the court, Mr Lyons?

Timothy I'm not lying.

D But Mr Booth and your mother have been dating, recently, isn't that the case?

Timothy I wouldn't have a clue. I haven't seen my mother for a couple of years.

D And you disapprove of the relationship, don't you?

Timothy It's none of my business what she does.

D So that's why you've made up these allegations against Mr Booth, to stop her seeing him.

Timothy No! That's not the case at all.

Defence: No further questions, Your Honour.

**Judge:** Thank you, Mr Lyons, you may step down from the witness box.

*Mr Lyons exits the witness box.*

**Prosecution:** I call my next witness, your Honour, Mrs Ellen Samuels.

*Mrs Samuels enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mrs Samuels repeats the oath.*

### **Examination-in-chief of Mrs Samuels**

Prosecution Please tell the court your full name, date of birth, and age.

Ellen: Ellen Maxine Samuels. I was born on 29 December 1947. I'm now 67.

Prosecution: And what is your occupation and place of work?

Ellen: I'm retired.

P: Do you know the accused, Mr Booth?

Ellen Yes, he was an acquaintance, many years ago.

P Can you explain how you came to know him?

Ellen I used to travel a lot in the 1990s, visiting family mostly, and he looked after my townhouse. He did the garden and collected my mail.

P Can you remember whether he did that for you in December 1997?

Ellen Oh yes, he did. I went overseas in December to celebrate my 50<sup>th</sup> birthday. I was away the whole month.

P And did you have a TV in your bedroom at the time, on top of a chest of drawers?

Ellen Yes, I did.

P: Thank you, Mrs Samuels, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mrs Samuels?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

**Cross-examination of Mrs Samuels**

D Mrs Samuels, did Mr Booth have the keys to your townhouse during the 1990s?

Ellen Yes, he had my spare set.

D You're sure about that?

Ellen Yes.

D But you said he only did the garden and collected your mail ... nothing else.

Ellen Well, he needed the keys to put my mail inside.

D You're absolutely sure you gave him a set of keys?

Ellen Yes. I am.

D Did you give him a set of keys every time you went away?

Ellen I think so.

D But you can't be sure?

Ellen I can't vouch for every time I went away, no. It was many years ago.

D Thank you, Your Honour, I have no further questions.

**Judge:** Thank you, Mrs Samuels, you may step down from the witness box.

*Mrs Samuels exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Ms Crown?

**Prosecution:** No, Your Honour, that concludes the case for the prosecution.

*Ms Crown sits.*

**Judge:** Mr Pearce, do you wish to call any witnesses?

*Mr Pearce stands.*

**Defence:** Yes, Your Honour. I call Mr Mark Booth.

*Mr Booth enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Booth repeats the oath.*

**Examination-in-chief of Mr Mark Booth**

- D Please tell the court your full name, date of birth, and age.
- Mark Mark Robert Booth. I was born on 13 August 1957. I'm 57.
- D What is your occupation and place of work?
- Mark I'm a self-employed construction manager.
- D I'd like to take you back to 1997 when Timothy Lyons joined the under-12 boys soccer team in Kogarah. Were you the coach at the time?
- Mark Yes, I was.
- D Do you remember meeting Timothy?
- Mark Yes.
- D At this time, did you take a group of boys to McDonald's after the soccer game?
- Mark Yes.
- D Why was that?
- Mark I had a team that year who weren't much good at soccer. So I think it started with me saying to one of them, look if you try really hard I'll take you to McDonald's for lunch. And then it just grew from there so I'd take just five or six if they played really well that day.
- D Did the parents give their permission?
- Mark Oh yes, I always made sure of that.
- D How did they get home?
- Mark Either I drove them or their parents came and picked them up.
- D How did you meet Timothy Lyons' mother?
- Mark She invited me in for a cup of tea when I dropped Timothy off.
- D Were you ever alone with Timothy during these visits?
- Mark Not that I recall.
- D Were you ever alone on the back porch with him while Mrs Lyons was in the kitchen?

Mark I wouldn't call it alone, the kitchen opened up onto the back porch. She could see us the whole time.

D Did you ever put make suggestive comments to Timothy during these visits about your sexual interest in his mother?

Mark Definitely not. The suggestion is ridiculous ... we were in full view of his mother whenever she was in the kitchen.

D What was your relationship with her?

Mark We went out a few times, that's all, nothing serious.

D But you offered to look after Timothy when she went to hospital?

Mark Yeah, she asked me. I really couldn't say no, I mean, she needed help and someone had to take care of the boy.

D So he stayed at your place, is that correct?

Mark Yes.

D Did Timothy share your bed?

Mark No, he slept on the couch although he was very worried about his mother, I remember, so I sat with him until he fell asleep.

D Did you watch a video on a TV in your bedroom?

Mark No.

D Are you sure?

Mark Absolutely sure, I've never had a TV in my bedroom.

D Did you have a second residence at that time?

Mark No.

D But you were looking after the townhouse of Mrs Ellen Samuels at this time?

Mark Yes.

D Did you have a key to her townhouse?

Mark Not that I recall.

D Did she give you a key so that you could deposit her mail inside?

Mark No, I used to slide it under the front door.

D So when Timothy stayed with you, you're sure that you slept in your own residence?

Mark Absolutely.

D Did you touch his penis?

Mark No, I certainly did not.

D Did you take his hand and place it on your penis?

Mark No I did not.

D Did you rub his penis with an oily substance?

Mark No, the thought is repugnant.

D Did you at any stage that night insert your finger into Timothy's anus?

Mark Certainly not.

D Did Timothy stay another night at your residence?

Mark No, I took him to the hospital the next day.

D Why was that?

Mark He was worried about his mother even though I said that we would visit her once the operation was over but he wouldn't listen.

D Did you try to reason with him?

Mark Sure, but he was just a scared kid. He was determined to visit the hospital and that was that. So in the end I took him there but he wanted to stay. I think they organised a bed for him in her room.

D Can you tell the court the nature of your relationship with Timothy's mother today?

Mark We've been seeing each other, on and off, for the past couple of years.

D And does Timothy know about this relationship?

Mark He certainly does.

D What was his reaction when he found out?

Mark My understanding is that he does not approve.

D And what have been the consequences?

Mark He refuses to see his mother and me.

D Thank you, Your Honour, I have no further questions.

*Mr Pearce sits.*

**Judge:** Ms Crown, would you like to cross-examine Mr Booth?

Prosecution: Yes, thank you, Your Honour.



*Ms Crown stands.*

**Cross-examination of Mr Booth**

P Mr Booth, you told the court today that you assisted Timothy's mother with her son, is that correct?

Mark I suppose I did.

P But that's your evidence, Mr Booth. You agreed to look after Timothy while his mother was in hospital. A woman you hardly knew.

Mark I don't see your point.

P My point is that you groomed Mrs Lyons, a woman you'd never met before, in order to get access to her son.

Mark That's rubbish, I was doing her a favour.

P And after offering to assist Mrs Lyons, you then got permission to take her son back to your home where he was sexually abused.

Mark That's not true.

P But you did make Timothy feel special because he was one of the boys you took to McDonald's after training.

Mark There's nothing wrong with making a young boy feel special.

P Except when it's for criminal purposes.

Mark That wasn't the reason.

P You must've known the effect on Timothy as one of your special boys. He doesn't have a father and now suddenly he has you to look up to.

Mark It's normal for the boys in a soccer team to look up to the coach.

P Which allowed you to take advantage of Timothy.

Mark That's not what happened.

P Mrs Lyons must've placed a lot of trust in you when she asked you to look after him.

Mark Yes, I suppose she did.

P And why did you want to help out a woman you hardly knew?

Mark Well, I was attracted to her, I wanted to impress her, I guess.

P Did she ask you or did you offer?

Mark She asked me.

P But it doesn't make sense—a young boy whose mother is in hospital suddenly runs away from your place and goes back home even though he knows no-one is there to look after him.

Mark That's not what happened—Timothy was panicked about his mother. He was determined to visit her. So I took him to the hospital.

P Did you see Mrs Lyons?

Mark No, I wasn't allowed because I wasn't a relative.

P Did you contact her after she came out of hospital?

Mark No.

P Why not?

Mark I can't remember.

P You can't remember? A woman you were attracted to, whose son you'd looked after, you didn't try to find out how she was?

Mark I think she rang me.

P You can't remember because there was no further contact, was there, after what you had done to her son?

Mark No, that's not true.

P You insinuated yourself into the life of this family, helping out Mrs Lyons who was in need, getting her to trust you so that you could take her son to your place and then Timothy no longer wants to have anything to do with you. The coach that Timothy looks up to, that Mrs Lyons trusted with her own son, and suddenly everything turns sour.

Mark That's not how it was.

P Because you took advantage of their trust and sexually abused Timothy when you should've been caring for him.

Mark No! That's not true.

P I have no further questions, your Honour.

**Judge:** Thank you, Mr Booth, you may step down from the witness box.

*Mr Booth exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Mr Pearce?

**Defence:** No, Your Honour, that concludes the case for the accused.

*Mr Pearce sits.*

**Judge:** Very well, I take it you are both ready to present your closing addresses?

*Ms Crown stands.*

## **Prosecution's Closing Address to the Jury**

Thank you Ladies and Gentlemen, for your attention during this trial. It's now time for me to summarise the Crown's case against Mr Booth. You'll remember that Mr Booth has been charged with two counts of sexual assault against Mr Timothy Lyons, the complainant. I will deal with each count separately to make things easier for you.

Count 1 is act of indecency towards a person under the age of 16 years, namely Timothy Lyons. You will vividly remember the testimony of Timothy who described the pizza Mr Booth bought for him and how they watched a movie together. Then when Mr Booth had got Timothy into his bed, he took advantage of him, touching his genitals and trying to persuade Timothy to touch Mr Booth's penis. When that didn't work, Mr Booth used some oily substance to rub Timothy's penis on the pretext of calming him down. All the while Timothy cried, wishing his mother would come to rescue him. This assault was clearly indecent according to community standards. On the basis of Timothy's unshakeable evidence, you will find the elements of count 1 are proved beyond reasonable doubt.

The next count is count 2. You'll remember Timothy's testimony about the hospitalisation of his mother and how Mr Booth offered to take care of him. Recall the events of that night in December 1997 when Timothy had to share Mr Booth's bed. While he had Timothy under his care, rather than looking after his welfare Mr Booth took advantage of Timothy's vulnerability. He turned Timothy onto his stomach and inserted a finger into Timothy's anus until young Timothy cried out in pain and distress. This sexual act is defined as sexual intercourse under our Crimes Act.

When questioned about his evidence, Mr Lyons did not waver in relation to where these assaults occurred and the circumstances in which they occurred, even though he may have been confused about the particular video he watched with the accused. When challenged about the furniture in the accused's bedroom, Mr Lyons revealed he had been taken to another residence in which there *was* a TV on top of a chest of drawers in the bedroom. You heard the evidence of Mrs Ellen Samuels who confirmed that her bedroom had identical furniture at a time when she was overseas and that the accused had a key to her townhouse.

It is the Crown's case, Ladies and Gentlemen, that the accused groomed this young boy and his mother in order to get Timothy alone so the accused could satisfy his sexual desires. The accused knows that Timothy does not have a father living with him. So he makes him feel special by including him in the group of boys he takes to McDonald's. He pays for the all the boys' lunches, with lots of fun, laughter and affection which Timothy quite obviously loved because his father was absent. The accused then creates an opportunity where he can be alone with Timothy by taking Timothy to stay with him when Mrs Lyons is in hospital. Inexplicably, after Mrs Lyons comes out of hospital, there is no further contact between the Lyons family and the accused.

Finally, during cross-examination it was suggested to Timothy that he had fabricated his allegations because he was jealous of his mother's relationship with the accused. This he denied because he was unaware of the current relationship between them, having not spoken to his mother for a couple of years.

Ladies and Gentlemen, the evidence against Mr Booth is overwhelming. While the facts are shocking the case is straight-forward. Don't accept the accused's denials in the face of Timothy's harrowing evidence. Timothy's evidence and the evidence of Mrs Samuels have given you sufficient grounds to find that the elements of each count have been proved beyond reasonable doubt. You should find Mr Booth guilty on both counts.

Thank you your Honour.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. Mr Pearce, you may make your closing statement to the jury.

*Mr Pearce stands.*

**Defence:** Thank you your Honour.

### **Defence's Closing Address to the Jury**

Ladies and Gentlemen of the jury, I also want to thank you for your attention in this trial. I want to remind you of the presumption of innocence which means that the accused is innocent until you decide otherwise. You should *only* find him guilty if the prosecution evidence is so convincing that there is no reasonable doubt in your minds.

Today you heard how Timothy Lyons accused my client of very serious offences when he was in his care. Your job is to carefully and methodically examine his credibility as well as the reliability of his evidence. Is he a credible witness? Is all of his evidence reliable? Could he be mistaken about certain events? Because in reality his evidence just doesn't stand up to scrutiny. So you must consider whether Timothy has fabricated his allegations. First of all, he couldn't be sure which movie he watched the night he said terrible things happened to him. Then he said he'd watched a movie released one year later on a TV in Mr Booth's bedroom even though Mr Booth didn't have a TV in his bedroom at the time. How can someone, in relation to something as serious as these allegations, get these key details so fundamentally wrong? That is what you have to ask yourselves, Ladies and Gentlemen.

Finally, Timothy reveals, for the very first time, that Mr Booth had *two* houses, *two* bedrooms, something he'd never even mentioned before. Why not? Wouldn't that be one of the things that would stick in your mind? This unusual situation where a man has two bedrooms? And when Timothy told his mother that Mr Booth had sexually abused him, his mother didn't believe him. Why was that? Was it because she could see through the lies, to a young boy's attempt to stop his mother from seeing her boyfriend so his life could go back to normal? So he could be the centre of attention once more?

I ask you to consider these glaring inconsistencies and Timothy's confusion in relation to key details. The prosecution's entire case rests on the unreliable testimony of a man who has a good reason to fabricate his evidence. Although Timothy denied it, he knows that the accused and his mother have been seeing each other for the past couple of years. His disapproval of this relationship is so great, Ladies and Gentlemen, that it should be enough to raise reasonable doubts in your minds in relation to both counts with which my client has been charged.

Finally, you heard Mr Booth's clear denials when he gave evidence. He did not waver under cross-examination when he denied the allegations against him. He simply befriended the Lyons family because Mrs Lyons needed assistance with her son which he willingly gave. This assistance is entirely consistent with his voluntary work as a soccer coach throughout the 1990s.

When you consider all the evidence together, you will see that there are just too many reasonable doubts, Ladies and Gentlemen. For that reason, you must acquit my client, Mr Booth, of both counts of sexual assault.

Thank you your Honour.

*Mr Pearce sits.*

### **Judge's summing up:**

**Judge:** Members of the jury, it is for you to assess the evidence of the Crown witnesses and the accused. You are not obliged to accept the whole of their evidence. You may, if you choose, accept parts of their evidence and reject other parts of their evidence.

You must not let sympathy or emotion sway your judgment. You are expected to use your individual qualities of reasoning, experience, common sense, as well as your understanding of people and human affairs during the course of your deliberations.

A critical part of the criminal justice system is the presumption of innocence. This means that a person who is charged with a criminal offence is presumed to be innocent unless and until the Crown persuades a jury that the person is guilty beyond reasonable doubt.

That burden rests upon the Crown in respect of every element or essential fact that makes up the offences with which the accused has been charged. There is no obligation whatsoever on the accused to prove any fact or issue that is in dispute before you. It is not for the accused to prove his innocence but for the Crown to prove his guilt in relation to each offence and to prove it beyond reasonable doubt. The Crown does not have to prove, however, every single fact in the case beyond reasonable doubt.

At the end of your consideration of the evidence in the trial and the submissions made to you by the parties you must ask yourself: ‘Has the Crown proved the guilt of the accused beyond reasonable doubt?’ If the answer is “Yes”, the appropriate verdict is “Guilty”. If the answer is “No”, the verdict must be “Not guilty”.

Whether your verdicts are “guilty” or “not guilty”, they ought to be unanimous.

#### ELEMENTS OF EACH COUNT

In this trial, the Crown must prove each element of each of the two counts against the accused.

##### **Count 1 – act of indecency**

For count 1, the Crown must prove the following elements beyond reasonable doubt:

1. That at the time and place alleged in the count;
2. The accused committed an act of indecency;
3. That the act was indecent; and
4. At the relevant time, Timothy Lyons was under the age of 16 years.

**Indecent:** the word indecent means contrary to the standards of ordinary and, therefore, respectable people in this community. For an act to be indecent it must have a sexual connotation or overtone. It is for you to determine the standards prevailing in our community. The law also provides that a child under 16 years of age cannot consent to an act of indecency.

##### **Count 2 – sexual intercourse against a child above the age of 10 years and under the age of 14 years**

For count 2, the Crown must prove the following elements beyond reasonable doubt:

1. That at the time and place alleged in the count;
2. The accused had sexual intercourse with Timothy Lyons; and
3. At the time Timothy Lyons was above the age of 10 years and under the age of 14 years.

**Sexual intercourse:** “sexual intercourse” is defined under our Crimes Act to include “sexual connection occasioned by the penetration, to any extent, of the anus of any person by any part of the body of another person.” The law provides that a person under the age of 16 years does not have the capacity to consent to sexual intercourse.

Finally, I remind you that the failure to prove any element of any count beyond reasonable doubt would mean that the accused is not guilty of that count.

#### SEPARATE CHARGES AND ALTERNATIVES

You must consider each count separately and return a separate verdict of guilty or not guilty on each of the counts. This means that you are entitled to bring in a verdict of guilty on one count and not guilty on the other count if there is a good reason in the evidence for that outcome.

If you accept beyond reasonable doubt that what Timothy Lyons said actually occurred then the case on each count would be proved. But if you have a reasonable doubt concerning the truthfulness or reliability of the evidence of Timothy Lyons in relation to one or other of the counts, that doubt must be taken into account in assessing the truthfulness or reliability of his evidence generally. If you were to find the accused not guilty on one count, particularly if that was because you had doubts about the reliability of Timothy Lyons' evidence, you would have to consider whether or how that conclusion affected your consideration of the remaining count. While you must consider each count separately, there must be a logical consistency in your verdicts.

#### INSTRUCTIONS ABOUT HOW TO USE THE EVIDENCE

If you find Timothy's evidence to be truthful, it is sufficient to satisfy the elements of act of indecency that the prosecution has to prove beyond reasonable doubt for Count 1.

Furthermore, if you find Timothy's evidence to be truthful, it is sufficient to satisfy the elements of sexual intercourse against a child above the age of 10 years and under the age of 14 years that the prosecution has to prove beyond reasonable doubt for Count 2.

Finally, the evidence of the accused should be treated in same way as that of other witnesses.

However, just because the accused testifies does not mean that the onus of proof shifts to the accused. Even if you reject the evidence of the accused, you must still be satisfied that the prosecution has established beyond reasonable doubt that the accused has committed each element of the two charges against him.

#### DELAY IN COMPLAINT

The delay in making a complaint is a matter that you may take into account in assessing the credibility of the complainant's evidence. In relation to both counts, there was delay of decades between the alleged incidents and the matters being reported to police.

However I am required by law to direct you that a delay in complaint, even a long delay, does not necessarily mean that a complaint is false. There may be good reasons why a person who alleges they have been sexually assaulted may fail to report, to delay in reporting, such an offence.

From your own knowledge of the world, you might think that there could be cases where embarrassment, guilt or worry about the reactions of family or friends might cause a person who alleges sexual abuse to suppress what has taken place.

#### PRACTICAL PROBLEMS FOR THE DEFENCE CAUSED BY LONG DELAY IN REPORTING

It is most important that you appreciate the effects of delay on the ability of the accused to defend himself by testing the prosecution's evidence or bringing forward evidence in his own case, to establish a reasonable doubt about his guilt.

One of the effects is the inability to properly inspect Mr Booth's former residences to determine the layout of Mr Booth's bedroom about which Timothy Lyons gave evidence. There is also the inability to determine the existence of another house or apartment that Mr Booth may have used. These difficulties put the accused at a significant disadvantage in testing the prosecution evidence, or in bringing forward evidence to establish a reasonable doubt about his guilt, or both.

Had the allegations been brought to light and the prosecution commenced much sooner, the complainant's memory for details would have been clearer, such as when the alleged incidents occurred. This may have enabled his evidence to be checked against independent sources so as to verify it, or disprove it. The complainant's inability to recall precise details of the alleged incidents makes it difficult for the accused to throw doubt on the complainant's evidence by pointing to the circumstances which may contradict him.

Another aspect of the accused's disadvantage is that if he had learned of the allegations at a much earlier time he may have been able to find more witnesses or items of evidence that might have either contradicted the complainant or supported his case, or both.

As a result, I warn you that before you convict the accused you must give the prosecution case the most careful scrutiny and bear in mind the matters I have just been speaking about—the fact that the complainant's evidence has not been tested to the extent that it otherwise might have been and the diminished ability of the accused to bring forward evidence to challenge it, or to support his defence.

However, I am not telling you that these problems for the accused make it impossible for the prosecution to prove its case. If, after carefully considering my warnings and scrutinising the complainant's evidence with great care (in the context of all the other evidence) you are well satisfied of the truth and accuracy of the complainant's evidence and you are satisfied beyond reasonable doubt that any of the alleged offences did occur, then it is your duty to return a verdict of guilty in relation to that matter.

With a final reminder that the verdicts you reach must be unanimous, I ask you to retire to the jury room to consider your verdicts.

Separate trial with one complainant (Timothy Lyons), medium case strength + relationship instruction

written by Annie Cossins<sup>2</sup>

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<sup>2</sup> With feedback from Jane Goodman-Delahunty, Judge Dina Yehia, a senior barrister, Vanessa Viaggio and Leigh Sanderson.



**Court Officer:** All rise.

*Everyone stands. Judge enters the court room and is seated.*

**Court Officer:** Please be seated.

*Everyone sits.*

### **Judge's initial remarks to the jury**

**Judge:** Good morning, ladies and gentlemen of the jury. Serving on a jury will be a completely new experience for some, if not all of you. It is, therefore, necessary for me to explain a number of matters to you.

The accused, Mr Mark Booth, seated before you, has been charged with two counts of sexual assault against the complainant, Mr Timothy Lyons. These two counts include: one count of act of indecency towards a person under the age of 16 years, namely Timothy Lyons and one count of sexual intercourse against a child above the age of 10 years and under the age of 14 years, namely Timothy Lyons.

Mr Booth has pleaded 'not guilty' to each of these charges.

You will be asked to decide whether Mr Booth, the accused, is guilty or not guilty on each of the different charges against him.

Please listen carefully to each of the witnesses as they give their evidence from the witness box. You should assess how each witness presents their evidence and how they respond to questions. This will assist you in deciding whether to accept all or only part of their evidence.

Each of you is now the judge of the facts. You may be wondering what my role is since I am also a judge. I am the judge of the law and I decide how the law is to be applied during the trial.

At the end of the trial, I will give you directions about the law that is relevant to this case. I will also explain how the law should be applied by you to the questions you have to decide.

I will now introduce the lawyers who appear in this case. The barrister on the right of the bar table is the Crown Prosecutor. She represents the State on behalf of the community and is referred to as Ms Crown.

The barrister sitting on the left of the bar table is Mr Pearce. He appears for the accused, Mr Booth, as his defence counsel.

The Crown bears the responsibility to place sufficient evidence before you, the jury, to prove its case against the accused beyond reasonable doubt. Ms Crown will present the Crown's case first. Then Mr Pearce will present any evidence that the accused wishes to place before the court in his defence.

There is a very important difference between the role of the Crown and that of the defence. You will have heard of the rule that the accused is innocent until proven guilty. This means that the prosecution must prove the elements of each offence beyond reasonable doubt. However, the accused has no obligation, whatsoever, to prove anything. The defence does not have to call any witnesses, or offer any evidence. The burden of proof is entirely on the prosecution.

Your role is to not to try and determine where the truth lies. Your role is simply to decide whether the Crown has produced sufficient evidence for you to be satisfied, beyond reasonable doubt, that the accused is guilty of each of the counts of sexual assault against him.

Shortly the Crown Prosecutor will give an overview of the case that the Crown seeks to establish by the evidence it will present. The prosecution's opening address is intended to assist you in understanding the evidence as it unfolds. However, what Ms Crown will say to you is not evidence. It is no more than a summary of the Crown's case against the accused. You may address the jury, Ms Crown.

*Ms Crown stands.*

### **Prosecution's Opening Address**

**Ms Crown:** Thank you, your Honour. Good morning Ladies and Gentlemen. I act on behalf of the Director of Public Prosecutions. My role, as the prosecutor in this matter, is to present evidence against the accused, Mr Booth. My purpose in speaking to you is to outline what the Crown intends to prove in this case.

Shortly, you will hear how the complainant in this case was a young boy befriended by the accused when the accused was the coach of the under-12 boys Kogarah soccer team during the 1990s.

The testimony of the Crown's first witness, Mr Timothy Lyons, will reveal that he became one of a few special boys whom the accused took to McDonald's after soccer training on Saturday mornings. But he was treated as even more special because of the extra attention he received from Mr Booth when he used to help out in the equipment room. It was in this room, when they were alone, that the accused encouraged Timothy to parade up and down like a model, first in his underpants, then naked while he was photographed and filmed, evidence which shows the accused's sexual interest in Timothy.

Timothy will also describe how Mr Booth was generally affectionate with all the boys. Mr Booth usually drove Timothy home and sometimes stayed to have a cup of tea with Timothy's mother on the back porch. Once when Timothy's mother was in the kitchen, Mr Booth joked about his sexual interest in Timothy's mother and then when Timothy indicated he was interested in the girl next door, Mr Booth asked him what he had "down there".

Between 1 and 31 December 1997, Mr Booth offered to look after Timothy for the three days his mother was in hospital for an operation. Because Mr Booth did not have a spare bed, Timothy slept in Mr Booth's double bed. Mr Booth committed an act indecency towards Timothy when Mr Booth stroked Timothy's penis and placed Timothy's hand on Mr Booth's penis. This incident is the subject of Count 1.

The Crown will also prove that Mr Booth had sexual intercourse with Timothy Lyons on the same day when he pushed Timothy onto his stomach then inserted a finger into Timothy's anus. This incident is the subject of Count 2.

The detailed evidence given by Timothy Lyons, who in the 1990s was a vulnerable boy under the age of 12 years, will prove beyond reasonable doubt that Mr Booth had the opportunity to commit these offences while Timothy was in his care and that he is guilty of each count of sexual assault against him.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. I will now ask Mr Pearce to address you on the matters raised in Ms Crown's opening address and any other matters to be raised by the accused. This opening is intended to assist you in understanding the issues in the trial and what the accused might say in answer to the Crown's allegations. But I need to remind you that, like Ms Crown's opening address, what Mr Pearce will say to you is not evidence. Mr Pearce.

*Mr Pearce stands.*

### **Defence's Opening Address**

**Mr Pearce:** Thank you, your Honour. Good morning Ladies and Gentlemen of the Jury, my name is Mr Pearce and I represent the accused in this trial. I would like to tell you something about the case you are about to hear.

There is no dispute that my client was the coach for the under-12 boys soccer team in Kogarah during the 1990s. There is also no dispute that my client knew Timothy Lyons. However, my client denies all the allegations against him. The allegations made by Timothy Lyons are a figment of his imagination. My client, Mr Booth, was on friendly terms with the mother of Mr Timothy Lyons. In fact, they were lovers for a short period of time, something that Timothy Lyons disapproved of. I will show you how he was clearly jealous of Mr Booth and wanted his mother's relationship with Mr Booth to come to an end.

I will also highlight the many inconsistencies in the evidence of Timothy Lyons. Not only did he not come forward for more than two decades, he was confused about key details such as the movie he watched the night he alleged Mr Booth sexually assaulted him and about the furniture in Mr Booth's apartment. In fact, when Mr Booth gives evidence, you will hear about my client's care and concern for Timothy and his mother. His testimony will show you that Timothy has fabricated the events said to constitute the assaults and that he intended to make trouble for my client because of his overwhelming desire for revenge against Mr Booth.

After hearing all the evidence, you will find that reasonable doubt does exist on each and every count and that my client is not guilty of the three counts against him.

*Mr Pearce sits.*

**Judge:** Ms Crown, you may call your first witness to the witness box.

*Ms Crown stands.*

**Prosecution:** I call my first witness, your Honour, Mr Timothy Lyons.

*Mr Lyons enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Lyons repeats the oath.*

### **Examination-in-chief of Mr Lyons**

Prosecution: Please tell the court your full name, date of birth, and age.

Timothy: My name is Timothy Dyson Lyons and I'm 29. I was born on 21 September 1986.

Prosecution: And what is your occupation and place of work?

Timothy: I'm a director of finance for Sydney Bank.

P: Can you tell the court when you joined the under-12 boys soccer team in Kogarah?

Timothy: It was just after my birthday in May 1997.

P: Was Mr Booth the coach of the team at the time?

Timothy: Yes.

P: How well did you know Mr Booth?

Timothy: Pretty well, I guess. I was one of the boys he took to McDonald's after training on Saturday mornings.

P Were you a special group of boys or did he take anyone to McDonald's?

Timothy No, he seemed to have his favourites, I think.

P And how did Mr Booth behave with you and the other boys he took to McDonald's?

Timothy: Oh, he was just like one of us. Except he was the biggest, the loudest, the funniest. He was great fun. He used to pay for our lunch and muck around, you know, lots of jokes.

P How did he treat you?

Timothy: Fine at first. He was friendly and very touchy, feely, I remember that. Ruffling our hair or arm around our shoulders, that kind of thing. I loved it because my Dad didn't live with me and Mum.

P How did you get home after McDonald's?

Timothy: Well, Mum said I could only go if someone drove me home. So Mark offered to do that.

P How well did your mother know Mr Booth?

Timothy: She met him when he drove me home. Sometimes he stayed for a cup of tea.

P On those occasions, were you ever alone with Mr Booth?

Timothy: Yeah, when my mother was in the kitchen.

P Did anything ever happen when you were alone with him?

Timothy: Once when we were on the back porch. He was teasing me, he put a piece of ice down my shorts and said that my mother was pretty sexy and pointed to his crotch.

P What did you do?

Timothy I just giggled, I was really embarrassed.

P Then what happened?

Timothy He said that will happen to me when I start looking at girls. And I said, I already did and pointed to the girl over the back fence, my next door neighbour. He laughed and said I was too young for that. Then he pointed to my shorts and asked me what I had 'down there'.

P Can you remember when this occurred?

Timothy It was sometime in August I think. Just before or maybe after my Mum's birthday.

P What did you say?

Timothy: Nothing because Mum called out to us.

P Were you ever alone with Mr Booth after that?

Timothy      Yeah, I helped him out in the equipment room after soccer training sometimes.

P              Did anything happen there?

Timothy      I remember when I changed out of my uniform he used to watch me. I didn't think anything of it at the time. He said I had a nice body for my age. Once he asked me to walk up and down the room, like I was a model. We laughed about it. He said I should think about becoming a male model.

P              And how often did that occur?

Timothy      It's hard to remember, a few times I guess, four or five. He brought a camera one time and took photos as I walked up and down.

P              Were you dressed?

Timothy      The first time, I was in my underpants. Then when he brought the camera, he asked me to walk up and down naked. He said they did that with male models to test them out. Another time he took a video of me as I did different poses.

P              What kind of poses?

Timothy      All sorts, really, front on, bending over, side on, like I was meant to be a model.

P              Did anything else happen?

Timothy      Yeah, sometimes he touched me, you know, to get the right pose. On my arm or leg, sometimes my bum or he'd show me how to cover my genitals for other poses.

P              By doing what?

Timothy      Like cupping them, my penis and that.

P              Were you ever alone with Mr Booth at any other time?

Timothy:     Yeah because he offered to look after me for three days when Mum had to go to hospital for an operation. It was in December, before Christmas.

P              And did you stay at Mr Booth's place?

Timothy      Yes.

P              What happened when you arrived there?

Timothy      He ordered a pizza and we watched a movie.

P              On the TV?

Timothy      Yeah, it was a video.

P              Can you remember the name?

Timothy      Ah ... yeah ... it was the second *Babe* film, *Pig in the City*.

P Are you sure about that?

Timothy Yes.

P And where did you sleep that night?

Timothy Well, I had to sleep in Mark's bed, he said.

P Did anything happen?

Timothy Yeah ... he started stroking my arms which I thought was a bit weird. But he said it would help me sleep because I was worried about my mother. Then he stroked my leg and after a while he ... ah ... he rubbed my penis on the outside of my underpants.

P Did anything else happen?

Timothy He took my hand and put it on his penis.

P What did you do?

Timothy I pulled my hand away, immediately.

P And what did Mr Booth do?

Timothy He just said I needed to calm down. So he pulled off my underpants and ... um ... rubbed my penis with some oily stuff.

P And how long did he do that for?

Timothy I can't really remember. I didn't understand what he was doing. I was crying and wishing my mother could come and get me.

P Then what happened?

Timothy He rolled me over onto my stomach and ... then ... um ... he pushed his finger into my backside.

P Your anus?

Timothy Yes.

P What did you do?

Timothy I yelled out cos it really hurt ... so he stopped.

P Did anything happen on the following nights?

Timothy No, because the next morning I ran back to my place. He drove round to get me later in the day. But I'd locked all the doors. I wouldn't let him in. I told him I'd ring the police if he didn't leave.

P And did you call the police?

Timothy No, I was too scared. I knew what had happened was wrong. I thought I'd be arrested.

P And did you tell your mother?

Timothy: She didn't believe me. She liked Mr Booth. I think they went out a couple of times. And she couldn't see him doing something like that. She said I was making it up to stop her from going out with him. She said I was jealous.

P And were you?

Timothy: A bit, yeah. But, not of him. I wanted his attention, not hers. She never understood that.

P And one other question, Timothy, do you know either of the other two complainants in this trial, Mr Justin McCutcheon or Mr Simon Rutter?

Simon No, I don't.

P: Thank you, Mr Lyons, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mr Lyons?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

### **Cross-examination of Mr Lyons**

D You told us today that you used to parade around like a model because Mr Booth asked you to, is that right?

Timothy Yes, that's right.

D And all this parading around occurred in the equipment room?

Timothy Yes.

D With other people around?

Timothy No, just me and Mr Booth.

D But someone could've walked in anytime, couldn't they?

Timothy I guess so but everyone used to go home straight after.

D I find that very hard to believe, Mr Lyons.

Timothy But it didn't happen straight away. He made sure of that.

D I see, and you've told us today that in 1997, sometime in December if I can be that vague, that Mr Booth sexually assaulted you a second time?

Timothy Yes.

D And on that night you say you watched a movie?

Timothy Yes.

D And what movie was that?

Timothy It was *Pig in the City*.

D But in your statement to the police, you said you were watching *Hercules*.

Timothy I just got confused, I think.

D So what makes you so sure it was *Pig in the City*?

Timothy Well, um, because I remember Mr Booth was imitating Farmer Hoggett and we laughed about it.

D And what would you say if I said that *Pig in the City* wasn't released until December 1998?

Timothy But that's what I remember.

D So you couldn't have watched that particular movie that night.

Timothy I don't know ... maybe it was *Hercules* ... I can't be sure now.

D I see. And where did you watch this movie?

Timothy On a TV.

D In Mr Booth's bedroom?

Timothy Yes.

D What if I was to say to you that in 1997 Mr Booth didn't have a TV in his bedroom?

Timothy Well, I remember watching a movie in his bedroom that night.

D You're sure you watched it on a TV?

Timothy Yes!

D There's no need to get upset, Mr Lyons.

Timothy I know we watched a movie that night.

D But you're not even sure what movie. And now you say it was on a TV in Mr Booth's bedroom.

Timothy Yes.

D Where was the TV located?

Timothy On top of a chest of drawers.

D I see. And what would you say if I told you the only furniture in Mr Booth's bedroom was a bed and a bedside table?

Timothy No, no, that's not right. I mean ... hang on, he had two places.



D I beg your pardon?

Timothy We had to go to his other place, it was a sort of townhouse, cos he'd left his wallet there. And that's where we had pizza and watched the movie in his bedroom.

D Are you making this up?

Timothy No, ask him, ask Mr Booth about his other place.

D This is the first I've heard about a second house. Why didn't you say this earlier?

Timothy It didn't occur to me, I wasn't asked specifically about which house.

D But it's crucial information that you haven't raised until now. This is very curious, Mr Lyons.

Timothy Only because of the TV.

D And you are absolutely sure you watched a movie that night?

Timothy Yes!

D You've also told the court today that you reported these events to your mother when they occurred in 1997

Timothy Yes.

D She didn't believe you, did she?

Timothy No.

D She didn't believe you because you'd made it up.

Timothy That's not the reason at all. She liked Mr Booth because they went out together a few times.

D You made up the whole story because you were jealous of Mr Booth. You weren't the centre of attention any more, were you? And that's what you wanted, for things to go back to just you and your Mum.

Timothy That's not true.

D Are you on talking terms with your mother, Mr Lyons?

Timothy No, not really.

D And why is that?

Timothy We argue, that's all.

D Argue? About what?

Timothy I don't know, just stuff.

D Because of Mr Booth, isn't it?

Timothy No.

D Are you lying to the court, Mr Lyons?

Timothy I'm not lying.

D But Mr Booth and your mother have been dating, recently, isn't that the case?

Timothy I wouldn't have a clue. I haven't seen my mother for a couple of years.

D And you disapprove of the relationship, don't you?

Timothy It's none of my business what she does.

D So that's why you've made up these allegations against Mr Booth, to stop her seeing him.

Timothy No! That's not the case at all.

Defence: No further questions, Your Honour.

**Judge:** Thank you, Mr Lyons, you may step down from the witness box.

*Mr Lyons exits the witness box.*

**Prosecution:** I call my next witness, your Honour, Mrs Ellen Samuels.

*Mrs Samuels enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mrs Samuels repeats the oath.*

**Examination-in-chief of Mrs Samuels**

Prosecution Please tell the court your full name, date of birth, and age.

Ellen: Ellen Maxine Samuels. I was born on 29 December 1947. I'm now 67.

Prosecution: And what is your occupation and place of work?

Ellen: I'm retired.

P: Do you know the accused, Mr Booth?

Ellen Yes, he was an acquaintance, many years ago.

P Can you explain how you came to know him?

Ellen I used to travel a lot in the 1990s, visiting family mostly, and he looked after my townhouse. He did the garden and collected my mail.

P Can you remember whether he did that for you in December 1997?

Ellen Oh yes, he did. I went overseas in December to celebrate my 50<sup>th</sup> birthday. I was away the whole month.

P And did you have a TV in your bedroom at the time, on top of a chest of drawers?

Ellen Yes, I did.

P: Thank you, Mrs Samuels, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mrs Samuels?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

### **Cross-examination of Mrs Samuels**

D Mrs Samuels, did Mr Booth have the keys to your townhouse during the 1990s?

Ellen Yes, he had my spare set.

D You're sure about that?

Ellen Yes.

D But you said he only did the garden and collected your mail ... nothing else.

Ellen Well, he needed the keys to put my mail inside.

D You're absolutely sure you gave him a set of keys?

Ellen Yes. I am.

D Did you give him a set of keys every time you went away?

Ellen I think so.

D But you can't be sure?

Ellen I can't vouch for every time I went away, no. It was many years ago.

D Thank you, Your Honour, I have no further questions.

**Judge:** Thank you, Mrs Samuels, you may step down from the witness box.

*Mrs Samuels exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Ms Crown?

**Prosecution:** No, Your Honour, that concludes the case for the prosecution.

*Ms Crown sits.*

**Judge:** Mr Pearce, do you wish to call any witnesses?

*Mr Pearce stands.*

**Defence:** Yes, Your Honour. I call Mr Mark Booth.

*Mr Booth enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Booth repeats the oath.*

**Examination-in-chief of Mr Mark Booth**

D Please tell the court your full name, date of birth, and age.

Mark Mark Robert Booth. I was born on 13 August 1957. I'm 57.

D What is your occupation and place of work?

Mark I'm a self-employed construction manager.

D I'd like to take you back to 1997 when Timothy Lyons joined the under-12 boys soccer team in Kogarah. Were you the coach at the time?

Mark Yes, I was.

D Do you remember meeting Timothy?

Mark Yes.

D And did Timothy help you out in the equipment room?

Mark Not that I can recall.

D Did you tell him he could be a male model and get him to parade up and down?

Mark Certainly not. He was a kid, not a model.

D And did you ever take pictures of him or film him at all?

Mark Never. The parents had plenty of cameras but I never did.

D At this time, did you take a group of boys to McDonald's after the soccer game?

Mark Yes.

D Why was that?

Mark I had a team that year who weren't much good at soccer. So I think it started with me saying to one of them, look if you try really hard I'll take you to McDonald's for lunch. And then it just grew from there so I'd take just five or six if they played really well that day.

D Did the parents give their permission?

Mark Oh yes, I always made sure of that.

D How did they get home?

Mark Either I drove them or their parents came and picked them up.

D How did you meet Timothy Lyons' mother?

Mark She invited me in for a cup of tea when I dropped Timothy off.

D Were you ever alone with Timothy during these visits?

Mark Not that I recall.

D Were you ever alone on the back porch with him while Mrs Lyons was in the kitchen?

Mark I wouldn't call it alone, the kitchen opened up onto the back porch. She could see us the whole time.

D Did you ever put make suggestive comments to Timothy during these visits about your sexual interest in his mother?

Mark Definitely not. The suggestion is ridiculous ... we were in full view of his mother whenever she was in the kitchen.

D What was your relationship with her?

Mark We went out a few times, that's all, nothing serious.

D But you offered to look after Timothy when she went to hospital?

Mark Yeah, she asked me. I really couldn't say no, I mean, she needed help and someone had to take care of the boy.

D So he stayed at your place, is that correct?

Mark Yes.

D Did Timothy share your bed?

Mark No, he slept on the couch although he was very worried about his mother, I remember, so I sat with him until he fell asleep.

D Did you watch a video on a TV in your bedroom?

Mark No.

D Are you sure?

Mark Absolutely sure, I've never had a TV in my bedroom.

D Did you have a second residence at that time?

Mark No.

D But you were looking after the townhouse of Mrs Ellen Samuels at this time?

Mark Yes.

D Did you have a key to her townhouse?

Mark Not that I recall.

D Did she give you a key so that you could deposit her mail inside?

Mark No, I used to slide it under the front door.

D So when Timothy stayed with you, you're sure that you slept in your own residence?

Mark Absolutely.

D Did you touch his penis?

Mark No, I certainly did not.

D Did you take his hand and place it on your penis?

Mark No I did not.

D Did you rub his penis with an oily substance?

Mark No, the thought is repugnant.

D Did you at any stage that night insert your finger into Timothy's anus?

Mark Certainly not.

D Did Timothy stay another night at your residence?

Mark No, I took him to the hospital the next day.

D Why was that?

Mark He was worried about his mother even though I said that we would visit her once the operation was over but he wouldn't listen.

D Did you try to reason with him?

Mark Sure, but he was just a scared kid. He was determined to visit the hospital and that was that. So in the end I took him there but he wanted to stay. I think they organised a bed for him in her room.

D Can you tell the court the nature of your relationship with Timothy's mother today?

Mark We've been seeing each other, on and off, for the past couple of years.

D And does Timothy know about this relationship?

Mark He certainly does.

D What was his reaction when he found out?

Mark My understanding is that he does not approve.

D And what have been the consequences?

Mark He refuses to see his mother and me.

D Thank you, Your Honour, I have no further questions.

*Mr Pearce sits.*

**Judge:** Ms Crown, would you like to cross-examine Mr Booth?

Prosecution: Yes, thank you, Your Honour.

*Ms Crown stands.*

**Cross-examination of Mr Booth**

P Mr Booth, you told the court today that you assisted Timothy's mother with her son, is that correct?

Mark I suppose I did.

P But that's your evidence, Mr Booth. You agreed to look after Timothy while his mother was in hospital. A woman you hardly knew.

Mark I don't see your point.

P My point is that you groomed Mrs Lyons, a woman you'd never met before, in order to get access to her son.

Mark That's rubbish, I was doing her a favour.

P And after offering to assist Mrs Lyons, you then got permission to take her son back to your home where he was sexually abused.

Mark That's not true.

P But you did make Timothy feel special because he was one of the boys you took to McDonald's after training.

Mark There's nothing wrong with making a young boy feel special.

P Except when it's for criminal purposes.

Mark That wasn't the reason.

P You must've known the effect on Timothy as one of your special boys. He doesn't have a father and now suddenly he has you to look up to.

Mark It's normal for the boys in a soccer team to look up to the coach.

P Which allowed you to take advantage of Timothy, such as undressing him and filming him in the equipment room.

Mark That never happened.

P Mrs Lyons must've placed a lot of trust in you when she asked you to look after him.

Mark Yes, I suppose she did.

P And why did you want to help out a woman you hardly knew?

Mark Well, I was attracted to her, I wanted to impress her, I guess.

P Did she ask you or did you offer?

Mark She asked me.

P But it doesn't make sense—a young boy whose mother is in hospital suddenly runs away from your place and goes back home even though he knows no-one is there to look after him.

Mark That's not what happened—Timothy was panicked about his mother. He was determined to visit her. So I took him to the hospital.

P Did you see Mrs Lyons?

Mark No, I wasn't allowed because I wasn't a relative.

P Did you contact her after she came out of hospital?

Mark No.

P Why not?

Mark I can't remember.

P You can't remember? A woman you were attracted to, whose son you'd looked after, you didn't try to find out how she was?

Mark I think she rang me.

P You can't remember because there was no further contact, was there, after what you had done to her son?

Mark No, that's not true.

P You insinuated yourself into the life of this family, helping out Mrs Lyons who was in need, getting her to trust you so that you could take her son to your place and then Timothy no longer wants to have anything to do with you. The coach that Timothy looks up to, that Mrs Lyons trusted with her own son, and suddenly everything turns sour.

Mark That's not how it was.



P Because you took advantage of their trust and sexually abused Timothy when you should've been caring for him.

Mark No! That's not true.

P I have no further questions, your Honour.

**Judge:** Thank you, Mr Booth, you may step down from the witness box.

*Mr Booth exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Mr Pearce?

**Defence:** No, Your Honour, that concludes the case for the accused.

*Mr Pearce sits.*

**Judge:** Very well, I take it you are both ready to present your closing addresses?

*Ms Crown stands.*

### **Prosecution's Closing Address to the Jury**

Thank you Ladies and Gentlemen, for your attention during this trial. It's now time for me to summarise the Crown's case against Mr Booth. You'll remember that Mr Booth has been charged with two counts of sexual assault against Mr Timothy Lyons, the complainant. I will deal with each count separately to make things easier for you.

Count 1 is act of indecency towards a person under the age of 16 years, namely Timothy Lyons. You will vividly remember the testimony of Timothy who described the pizza Mr Booth bought for him and how they watched a movie together. Then when Mr Booth had got Timothy into his bed, he took advantage of him, touching his genitals and trying to persuade Timothy to touch Mr Booth's penis. When that didn't work, Mr Booth used an oily substance to rub Timothy's penis on the pretext of calming him down. All the while Timothy cried, wishing his mother would come to rescue him. This assault was clearly indecent according to community standards and was committed when Timothy was under the accused's care. On the basis of Timothy's unshakeable evidence, you will find the elements of count 1 are proved beyond reasonable doubt.

The next count is count 2. You'll remember Timothy's testimony about the hospitalisation of his mother and how Mr Booth offered to take care of him. Recall the events of that night in December 1997 when Timothy had to share Mr Booth's bed. While he had Timothy under his care, rather than looking after his welfare Mr Booth took advantage of Timothy's vulnerability. He turned Timothy onto his stomach and inserted a finger into Timothy's anus until young Timothy cried out in pain and distress. This sexual act is defined as sexual intercourse under our Crimes Act.

When questioned about his evidence, Mr Lyons did not waver in relation to where these assaults occurred and the circumstances in which they occurred, even though he may have been confused about the particular video he watched with the accused. When challenged about the furniture in the accused's bedroom, Mr Lyons revealed he had been taken to another residence in which there *was* a TV on top of a chest of drawers in the bedroom. You heard the evidence of Mrs Ellen Samuels who confirmed that her bedroom had identical furniture at a time when she was overseas and that the accused had a key to her townhouse.

You also heard evidence from Timothy Lyons about other sexual and non-sexual acts committed by Mr Booth. These include asking Timothy to parade in the equipment room half-naked and then naked like a model, touching Timothy on his bottom and genitals while photographing and filming Timothy in various poses. This evidence of what I will call 'other acts' has been led for specific purposes, that is, to put into context the

particular sexual acts that *are* the subject of the charges so that the charged sexual acts do not appear to occur out of the blue.

Without the evidence of these other acts, you may wonder about the likelihood of what may appear to be isolated sexual acts occurring out of the blue without any reason or anything to link them. If you had not heard about the evidence of other acts, you may have thought that Timothy's evidence was less credible because it didn't make sense. So the evidence of the other acts is placed before you only to answer questions that might otherwise arise in your mind about the particular allegations in the indictment, such as why Timothy willingly went to stay at the accused's house and slept in the accused's bed even after the first incident of sexual abuse.

It is the Crown's case, Ladies and Gentlemen, that the accused groomed Timothy Lyons as a young boy and his mother in order to get Timothy alone so the accused could satisfy his sexual desires. But more than that, this grooming behaviour was ongoing and involved a number of sexual and non-sexual acts to gain Timothy's trust and to get him used to being touched in a sexual way so that he appeared to acquiesce in the charged sexual acts. The accused knows that Timothy does not have a father living with him. So he makes him feel special by including him in the group of boys he takes to McDonald's. He pays for the all the boys' lunches, with lots of fun, laughter and affection which Timothy quite obviously loved because his father was absent. The accused then creates opportunities where he can be alone with Timothy, first in the equipment room, and then by taking Timothy to stay with him when Mrs Lyons is in hospital. Inexplicably, after Mrs Lyons comes out of hospital, there is no further contact between the Lyons family and the accused.

Finally, during cross-examination it was suggested to Timothy that he had fabricated his allegations because he was jealous of his mother's relationship with the accused. This he denied because he was unaware of the current relationship between them, having not spoken to his mother for a couple of years.

Ladies and Gentlemen, the evidence against Mr Booth is overwhelming. While the facts are shocking the case is straight-forward. Don't accept the accused's denials in the face of Timothy's harrowing evidence. Timothy's evidence and the evidence of Mrs Samuels have given you sufficient grounds to find that the elements of each count have been proved beyond reasonable doubt. You should find Mr Booth guilty on both counts.

Thank you your Honour.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. Mr Pearce, you may make your closing statement to the jury.

*Mr Pearce stands.*

**Defence:** Thank you your Honour.

### **Defence's Closing Address to the Jury**

Ladies and Gentlemen of the jury, I also want to thank you for your attention in this trial. I want to remind you of the presumption of innocence which means that the accused is innocent until you decide otherwise. You should *only* find him guilty if the prosecution evidence is so convincing that there is no reasonable doubt in your minds.

Today you heard how Timothy Lyons accused my client of very serious offences when he was in his care. But your job is to carefully and methodically examine his credibility as a witness as well as the reliability of his evidence. Is he credible in your eyes? Is all of his evidence reliable? Could he be mistaken about certain events? Because in reality his evidence doesn't stand up to scrutiny. So you must consider whether Timothy has fabricated his allegations. First of all, how likely is it that a soccer coach would photograph and film a young boy in the equipment room when anyone could walk in at any moment? When Timothy gave evidence, he couldn't be sure which movie he watched the night he said terrible things happened to him. Then he said

he'd watched a movie released one year later on a TV in Mr Booth's bedroom even though Mr Booth didn't have a TV in his bedroom at the time. How can someone, in relation to something as serious as these allegations, get these key details so fundamentally wrong? That is what you have to ask yourselves, Ladies and Gentlemen.

Finally, Timothy reveals, for the very first time, that Mr Booth had *two* houses, *two* bedrooms, something he'd never even mentioned before. Why not? Wouldn't that be one of the things that would stick in your mind? This unusual situation where a man has two bedrooms? And when Timothy told his mother that Mr Booth had sexually abused him, his mother didn't believe him. Why was that? Was it because she could see through the lies, to a young boy's attempt to stop his mother from seeing her boyfriend so his life could go back to normal? So he could be the centre of attention once more?

I ask you to consider these glaring inconsistencies and Timothy's confusion in relation to key details. The prosecution's entire case rests on the unreliable testimony of a man who has a good reason to fabricate his evidence. Although Timothy denied it, he knows that the accused and his mother have been seeing each other for the past couple of years. His disapproval of this relationship is so great, Ladies and Gentlemen, that it should be enough to raise reasonable doubts in your minds in relation to both counts with which my client has been charged.

Finally, you heard Mr Booth's clear denials when he gave evidence. He did not waver under cross-examination when he denied the allegations against him and the alleged activities in the equipment room. He simply befriended the Lyons family because Mrs Lyons needed assistance with her son which he willingly gave. This assistance is entirely consistent with his voluntary work as a soccer coach throughout the 1990s.

When you consider all the evidence together, you will see that there are just too many reasonable doubts, Ladies and Gentlemen. For that reason, you must acquit my client, Mr Booth, of both counts of sexual assault.

Thank you your Honour.

*Mr Pearce sits.*

### **Judge's summing up:**

**Judge:** Members of the jury, it is for you to assess the evidence of the Crown witnesses and the accused. You are not obliged to accept the whole of their evidence. You may, if you choose, accept parts of their evidence and reject other parts of their evidence.

You must not let sympathy or emotion sway your judgment. You are expected to use your individual qualities of reasoning, experience, common sense, as well as your understanding of people and human affairs during the course of your deliberations.

A critical part of the criminal justice system is the presumption of innocence. This means that a person who is charged with a criminal offence is presumed to be innocent unless and until the Crown persuades a jury that the person is guilty beyond reasonable doubt.

That burden rests upon the Crown in respect of every element or essential fact that makes up the offences with which the accused has been charged. There is no obligation whatsoever on the accused to prove any fact or issue that is in dispute before you. It is not for the accused to prove his innocence but for the Crown to prove his guilt in relation to each offence and to prove it beyond reasonable doubt. The Crown does not have to prove, however, every single fact in the case beyond reasonable doubt.

At the end of your consideration of the evidence in the trial and the submissions made to you by the parties you must ask yourself: 'Has the Crown proved the guilt of the accused beyond reasonable doubt?' If the answer is "Yes", the appropriate verdict is "Guilty". If the answer is "No", the verdict must be "Not guilty".

Whether your verdicts are “guilty” or “not guilty”, they ought to be unanimous.

## ELEMENTS OF EACH COUNT

In this trial, the Crown must prove each element of each of the two counts against the accused.

### **Count 1 – act of indecency**

For count 1, the Crown must prove the following elements beyond reasonable doubt:

5. That at the time and place alleged in the count;
6. The accused committed an act of indecency;
7. That the act was indecent; and
8. At the relevant time, Timothy Lyons was under the age of 16 years.

**Indecent:** the word indecent means contrary to the standards of ordinary and, therefore, respectable people in this community. For an act to be indecent it must have a sexual connotation or overtone. It is for you to determine the standards prevailing in our community. The law also provides that a child under 16 years of age cannot consent to an act of indecency.

### **Count 2 – sexual intercourse against a child above the age of 10 years and under the age of 14 years**

For count 2, the Crown must prove the following elements beyond reasonable doubt:

4. That at the time and place alleged in the count;
5. The accused had sexual intercourse with Timothy Lyons; and
6. At the time Timothy Lyons was above the age of 10 years and under the age of 14 years.

**Sexual intercourse:** “sexual intercourse” is defined under our Crimes Act to include “sexual connection occasioned by the penetration, to any extent, of the anus of any person by any part of the body of another person.” The law provides that a person under the age of 16 years does not have the capacity to consent to sexual intercourse.

Finally, I remind you that the failure to prove any element of any count beyond reasonable doubt would mean that the accused is not guilty of that count.

## SEPARATE CHARGES AND ALTERNATIVES

You must consider each count separately and return a separate verdict of guilty or not guilty on each of the counts. This means that you are entitled to bring in a verdict of guilty on one count and not guilty on the other count if there is a good reason in the evidence for that outcome.

If you accept beyond reasonable doubt that what Timothy Lyons said actually occurred then the case on each count would be proved. But if you have a reasonable doubt concerning the truthfulness or reliability of the evidence of Timothy Lyons in relation to one or other of the counts, that doubt must be taken into account in assessing the truthfulness or reliability of his evidence generally. If you were to find the accused not guilty on one count, particularly if that was because you had doubts about the reliability of Timothy Lyons’ evidence, you would have to consider whether or how that conclusion affected your consideration of the remaining count. While you must consider each count separately, there must be a logical consistency in your verdicts.

## INSTRUCTIONS ABOUT HOW TO USE THE EVIDENCE

If you find Timothy’s evidence to be truthful, it is sufficient to satisfy the elements of act of indecency that the prosecution has to prove beyond reasonable doubt for Count 1.

Furthermore, if you find Timothy's evidence to be truthful, it is sufficient to satisfy the elements of sexual intercourse against a child above the age of 10 years and under the age of 14 years that the prosecution has to prove beyond reasonable doubt for Count 2.

Finally, the evidence of the accused should be treated in same way as that of other witnesses.

However, just because the accused testifies does not mean that the onus of proof shifts to the accused. Even if you reject the evidence of the accused, you must still be satisfied that the prosecution has established beyond reasonable doubt that the accused has committed each element of the two charges against him.

## CONTEXT EVIDENCE

In addition to the evidence led by the Crown specifically on the counts in the indictment, the Crown has led evidence of other alleged misconduct by the accused towards the complainant. I shall, for the sake of convenience, refer to this evidence as evidence of "other acts". The evidence of the other acts is as follows:

1. That the accused encouraged Timothy to parade up and down the equipment room like a model, half-naked and then naked;
2. That the accused filmed and photographed Timothy in various naked poses;
3. That the accused touched Timothy's bottom and genitals while encouraging him to perform naked poses.

\*Without the evidence of these other acts the Crown says, you may wonder about the likelihood of apparently isolated acts occurring suddenly without any reason or any circumstance to link them in any way. If you had not heard about the evidence of other acts, you may have thought that Timothy Lyons' evidence was less credible because it was less understandable. So the evidence is placed before you only to answer questions that might otherwise arise in your mind about the particular allegations in the charges in the indictment.

If, for example, the particular acts charged are placed in a wider context, that is, a context of what the complainant alleges was an ongoing history of the accused's conduct toward him, then what might appear to be a curious feature of the complainant's evidence — that he willingly stayed at the accused's house and slept in the accused's bed even after the first occasion when he says he was sexually assaulted — would disappear. It is for that reason that the law permits a complainant to give an account of the alleged sexual history between himself and an accused person in addition to the evidence given in support of the charges in the indictment. It is to avoid any artificiality or unreality in the presentation of the evidence from the complainant. The complainant's account of other acts by the accused allows him to more naturally and intelligibly explain his account of what allegedly took place.

However, I must give you some important warnings with regard to the use of this evidence of other acts. Firstly, you must not use this evidence of other acts as establishing a tendency on the part of the accused to commit offences of the type charged. You cannot act on the basis that the accused is likely to have committed the offences charged because the complainant made other allegations against him. This is not the reason that the Crown placed the evidence before you. The evidence has a very limited purpose as I have explained it to you, and it cannot be used for any other purpose or as evidence that the particular allegations contained in the charges have been proved beyond reasonable doubt.

Secondly, you must not substitute the evidence of the other acts for the evidence of the specific allegations contained in the charges in the indictment. The Crown is not charging a course of misconduct by the accused but has charged particular allegations arising in what the complainant says, was a course of sexual misconduct. You are concerned with the particular and precise occasion alleged in each charge.

You must not reason that, just because the accused may have done something wrong to the complainant on some or other occasion, he must have done so on the occasions alleged in the indictment. You cannot punish the accused for other acts attributed to him by finding the accused guilty of the charges in the indictment. Such a line of reasoning would amount to a misuse of the evidence and would not be in accordance with the law.

#### DELAY IN COMPLAINT

The delay in making a complaint is a matter that you may take into account in assessing the credibility of the complainant's evidence. In relation to both counts, there was delay of decades between the alleged incidents and the matters being reported to police.

However I am required by law to direct you that a delay in complaint, even a long delay, does not necessarily mean that a complaint is false. There may be good reasons why a person who alleges they have been sexually assaulted may fail to report, to delay in reporting, such an offence.

From your own knowledge of the world, you might think that there could be cases where embarrassment, guilt or worry about the reactions of family or friends might cause a person who alleges sexual abuse to suppress what has taken place.

#### PRACTICAL PROBLEMS FOR THE DEFENCE CAUSED BY LONG DELAY IN REPORTING

It is most important that you appreciate the effects of delay on the ability of the accused to defend himself by testing the prosecution's evidence or bringing forward evidence in his own case, to establish a reasonable doubt about his guilt.

One of the effects is the inability to properly inspect Mr Booth's former residences to determine the layout of Mr Booth's bedroom about which Timothy Lyons gave evidence. There is also the inability to determine the existence of another house or apartment that Mr Booth may have used. These difficulties put the accused at a significant disadvantage in testing the prosecution evidence, or in bringing forward evidence to establish a reasonable doubt about his guilt, or both.

Had the allegations been brought to light and the prosecution commenced much sooner, the complainant's memory for details would have been clearer, such as when the alleged incidents occurred. This may have enabled his evidence to be checked against independent sources so as to verify it, or disprove it. The complainant's inability to recall precise details of the alleged incidents makes it difficult for the accused to throw doubt on the complainant's evidence by pointing to the circumstances which may contradict him.

Another aspect of the accused's disadvantage is that if he had learned of the allegations at a much earlier time he may have been able to find more witnesses or items of evidence that might have either contradicted the complainant or supported his case, or both. As a result, I warn you that before you convict the accused you must give the prosecution case the most careful scrutiny and bear in mind the matters I have just been speaking about—the fact that the complainant's evidence has not been tested to the extent that it otherwise might have been and the diminished ability of the accused to bring forward evidence to challenge it, or to support his defence.

However, I am not telling you that these problems for the accused make it impossible for the prosecution to prove its case. If, after carefully considering my warnings and scrutinising the complainant's evidence with great care (in the context of all the other evidence) you are well satisfied of the truth and accuracy of the complainant's evidence and you are satisfied beyond reasonable doubt that any of the alleged offences did occur, then it is your duty to return a verdict of guilty in relation to that matter.

With a final reminder that the verdicts you reach must be unanimous, I ask you to retire to the jury room to consider your verdicts.

# One complainant with tendency evidence from two other witnesses

written by Annie Cossins<sup>3</sup>

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<sup>3</sup> With feedback from Jane Goodman-Delahunty, Judge Dina Yehia, a senior barrister, Vanessa Viaggio and Leigh Sanderson and research assistance by Natalie Hodgson.



**Court Officer:** All rise.

*Everyone stands. Judge enters the court room and is seated.*

**Court Officer:** Please be seated.

*Everyone sits.*

### **Judge's initial remarks to the jury**

**Judge:** Good morning, ladies and gentlemen of the jury. Serving on a jury will be a completely new experience for some, if not all of you. It is, therefore, necessary for me to explain a number of matters to you.

The accused, Mr Mark Booth, seated before you, has been charged with two counts of sexual assault against the complainant, Mr Timothy Lyons. These two counts include: one count of act of indecency towards a person under the age of 16 years, namely Timothy Lyons and one count of sexual intercourse against a child above the age of 10 years and under the age of 14 years, namely Timothy Lyons.

Mr Booth has pleaded 'not guilty' to each of these charges.

You will be asked to decide whether Mr Booth, the accused, is guilty or not guilty on each of the different charges against him.

Please listen carefully to each of the witnesses as they give their evidence from the witness box. You should assess how each witness presents their evidence and how they respond to questions. This will assist you in deciding whether to accept all or only part of their evidence.

Each of you is now the judge of the facts. You may be wondering what my role is since I am also a judge. I am the judge of the law and I decide how the law is to be applied during the trial.

At the end of the trial, I will give you directions about the law that is relevant to this case. I will also explain how the law should be applied by you to the questions you have to decide.

I will now introduce the lawyers who appear in this case. The barrister on the right of the bar table is the Crown Prosecutor. She represents the State on behalf of the community and is referred to as Ms Crown.

The barrister sitting on the left of the bar table is Mr Pearce. He appears for the accused, Mr Booth, as his defence counsel.

The Crown bears the responsibility to place sufficient evidence before you, the jury, to prove its case against the accused beyond reasonable doubt. Ms Crown will present the Crown's case first. Then Mr Pearce will present any evidence that the accused wishes to place before the court in his defence.

There is a very important difference between the role of the Crown and that of the defence. You will have heard of the rule that the accused is innocent until proven guilty. This means that the prosecution must prove the elements of each offence beyond reasonable doubt. However, the accused has no obligation, whatsoever, to prove anything. The defence does not have to call any witnesses, or offer any evidence. The burden of proof is entirely on the prosecution.

Your role is to not to try and determine where the truth lies. Your role is simply to decide whether the Crown has produced sufficient evidence for you to be satisfied, beyond reasonable doubt, that the accused is guilty of each of the counts of sexual assault against him.

Shortly the Crown Prosecutor will give an overview of the case that the Crown seeks to establish by the evidence it will present. The prosecution's opening address is intended to assist you in understanding the evidence as it unfolds. However, what Ms Crown will say to you is not evidence. It is no more than a summary of the Crown's case against the accused. You may address the jury, Ms Crown.

*Ms Crown stands.*

### **Prosecution's Opening Address**

**Ms Crown:** Thank you, your Honour. Good morning Ladies and Gentlemen. I act on behalf of the Director of Public Prosecutions. My role, as the prosecutor in this matter, is to present evidence against the accused, Mr Booth. My purpose in speaking to you is to outline what the Crown intends to prove in this case.

Shortly, you will hear how the complainant in this case was a young boy befriended by the accused when the accused was the coach of the under-12 boys Kogarah soccer team during the 1990s.

The testimony of the Crown's first witness, Mr Timothy Lyons, will reveal that he became one of a few special boys whom the accused took to McDonald's after soccer training on Saturday mornings. Timothy will also describe how Mr Booth was generally affectionate with all the boys. Mr Booth usually drove Timothy home and sometimes stayed to have a cup of tea with Timothy's mother on the back porch. Once when Timothy's mother was in the kitchen, Mr Booth joked about his sexual interest in Timothy's mother and then when Timothy indicated he was interested in the girl next door, Mr Booth asked him what he had "down there".

Between 1 and 31 December 1997, Mr Booth offered to look after Timothy for the three days his mother was in hospital for an operation. Because Mr Booth did not have a spare bed, Timothy slept in Mr Booth's double bed. Mr Booth committed an act indecency towards Timothy when Mr Booth stroked Timothy's penis and placed Timothy's hand on Mr Booth's penis. This incident is the subject of Count 1.

The Crown will also prove that Mr Booth had sexual intercourse with Timothy Lyons on the same day when he pushed Timothy onto his stomach then inserted a finger into Timothy's anus. This incident is the subject of Count 2.

You will also hear from two other witnesses in this case, Simon Rutter and Justin McCutcheon. Like Timothy, both of these boys were befriended by the accused when he was the coach of the under-12 boys Kogarah soccer team during the 1990s. Simon Rutter will give evidence that he frequently visited the accused's home in Gynea Bay while waiting for his mother to pick him up after she finished work. On one occasion, after having a shower, the accused offered to dry Simon with a towel which progressed to the accused stroking Simon's penis as the accused pressed his body against him.

Justin McCutcheon will testify that he and the accused spent time together on the weekends after Justin's father and Mr Booth became friends. When Justin's father travelled for work, Justin sometimes went to the movies and to Caringbah swimming pool with Mr Booth. After a late night at the movies, Justin stayed overnight in Mr Booth's apartment. Justin's testimony will reveal how Mr Booth insisted on removing all of Justin's clothing and sharing his bed with Justin. He then touched Justin's genitals, forced Justin to touch the accused's penis, then masturbated Justin and himself at the same time.

Justin will also give evidence that, about a week later, when Mr Booth was driving Justin home from the swimming pool, he turned into a park, reached over, took Justin's hand and placed it on Mr Booth's penis then drew Justin's head down into his lap where he forced his penis into Justin's mouth.

As you will see, the evidence of Simon Rutter and Justin McCutcheon supports the detailed evidence given by the complainant, Timothy Lyons, who in the 1990s was a vulnerable boy under the age of 12 years. Timothy's evidence will prove beyond reasonable doubt that Mr Booth had the opportunity to commit the offences while Timothy was in his care and that he is guilty of each count of sexual assault against him.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. I will now ask Mr Pearce to address you on the matters raised in Ms Crown's opening address and any other matters to be raised by the accused. This opening is intended to assist you in understanding the issues in the trial and what the accused might say in answer to the Crown's allegations. But I need to remind you that, like Ms Crown's opening address, what Mr Pearce will say to you is not evidence. Mr Pearce.

*Mr Pearce stands.*

### **Defence's Opening Address**

**Mr Pearce:** Thank you, your Honour. Good morning Ladies and Gentlemen of the Jury, my name is Mr Pearce and I represent the accused in this trial. I would like to tell you something about the case you are about to hear.

There is no dispute that my client was the coach for the under-12 boys soccer team in Kogarah during the 1990s. There is also no dispute that my client knew Timothy Lyons, Simon Rutter and Justin McCutcheon. However, my client denies all the allegations against him. The allegations made by Timothy Lyons are a figment of his imagination. My client, Mr Booth, was on friendly terms with the mother of Timothy Lyons. In fact, they were lovers for a short period of time, something that Timothy Lyons disapproved of. I will show you how he was clearly jealous of Mr Booth and wanted his mother's relationship with Mr Booth to come to an end.

I will also highlight the many inconsistencies in the evidence of Timothy Lyons. Not only did he not come forward for more than two decades, he was confused about key details such as the movie he watched the night he alleged Mr Booth sexually assaulted him and about the furniture in Mr Booth's apartment. In fact, when Mr Booth gives evidence, you will hear about my client's care and concern for Timothy and his mother. His testimony will show you that Timothy has fabricated the events said to constitute the assaults and that he intended to make trouble for my client because of his overwhelming desire for revenge against Mr Booth.

Mr Booth also denies the allegations of sexual assault from the two witnesses in this case, Simon Rutter and Justin McCutcheon. Mr Booth will explain that Simon Rutter's allegations have been fabricated for financial gain. On a few occasions, my client looked after Simon at his home in GyMEA Bay. This assisted Simon's mother who worked Saturdays. My client's good deeds all those years ago have been turned against him. You will see that Simon had been abandoned by his father and was a troubled lad, who didn't like being told what to do. Today, Simon is still a troubled person whose allegations were made just before he applied for victim's compensation.

My client also assisted the parents of Justin McCutcheon whose father travelled frequently for work. During the time that Justin was in the soccer team, Mr Booth and Justin's father became good friends. As a favour to Justin's father, my client occasionally took Justin to the movies or to the local swimming pool. Justin became jealous of Mr Booth's friendship with his father especially because he himself saw so little of his father. Justin was suspended from school due to his habit of forging his father's signature in order to explain his absences from school. For reasons known only to Justin, he has concocted a story of sexual abuse, allegations that my client completely denies.

I will also highlight the many inconsistencies in the evidence of Simon Rutter, Justin McCutcheon and Timothy Lyons. Not only did they not come forward for more than two decades, they have changed their minds, more than once, about the dates on which the incidents are said to have occurred or changed their minds about other events.

After hearing all the evidence, you will find that reasonable doubt does exist on each and every count and that my client is not guilty of the two counts against him.

*Mr Pearce sits.*

**Judge:** Ms Crown, you may call your first witness to the witness box.

*Ms Crown stands.*

**NB: THE ORDER OF THE 3 WITNESSES' TESTIMONY DIFFERS FROM CONDITION 6**

**Prosecution:** I call my first witness, your Honour, Mr Timothy Lyons.

*Mr Lyons enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Lyons repeats the oath.*

**Examination-in-chief of Timothy Lyons**

Prosecution: Please tell the court your full name, date of birth, and age.

Timothy: My name is Timothy Dyson Lyons and I'm 29. I was born on 21 September 1986.

Prosecution: And what is your occupation and place of work?

Timothy: I'm a director of finance for Sydney Bank.

P: Can you tell the court when you joined the under-12 boys soccer team in Kogarah?

Timothy: It was just after my birthday in May 1997.

P: Was Mr Booth the coach of the team at the time?

Timothy: Yes.

P: How well did you know Mr Booth?

Timothy: Pretty well, I guess. I was one of the boys he took to McDonald's after training on Saturday mornings.

P: Were you a special group of boys or did he take anyone to McDonald's?

Timothy: No, he seemed to have his favourites, I think.

P: And how did Mr Booth behave with you and the other boys he took to McDonald's?

Timothy: Oh, he was just like one of us. Except he was the biggest, the loudest, the funniest. He was great fun. He used to pay for our lunch and muck around, you know, lots of jokes.

P: How did he treat you?

Timothy: Fine at first. He was friendly and very touchy, feely, I remember that. Ruffling our hair or arm around our shoulders, that kind of thing. I loved it because my Dad didn't live with me and Mum.

P How did you get home after McDonald's?

Timothy: Well, Mum said I could only go if someone drove me home. So Mark offered to do that.

P How well did your mother know Mr Booth?

Timothy: She met him when he drove me home. Sometimes he stayed for a cup of tea.

P On those occasions, were you ever alone with Mr Booth?

Timothy: Yeah, when my mother was in the kitchen.

P Did anything ever happen when you were alone with him?

Timothy: Once when we were on the back porch. He was teasing me, he put a piece of ice down my shorts and said that my mother was pretty sexy and pointed to his crotch.

P What did you do?

Timothy I just giggled, I was really embarrassed.

P Then what happened?

Timothy He said that will happen to me when I start looking at girls. And I said, I already did and pointed to the girl over the back fence, my next door neighbour. He laughed and said I was too young for that. Then he pointed to my shorts and asked me what I had 'down there'.

P Can you remember when this occurred?

Timothy It was sometime in August I think. Just before or maybe after my Mum's birthday.

P What did you say?

Timothy: Nothing because Mum called out to us.

P Were you ever alone with Mr Booth after that?

Timothy: Yeah because he offered to look after me for three days when Mum had to go to hospital for an operation. It was in December, before Christmas.

P And did you stay at Mr Booth's place?

Timothy Yes.

P What happened when you arrived there?

Timothy He ordered a pizza and we watched a movie.

P On the TV?

Timothy Yeah, it was a video.

P Can you remember the name?

Timothy Ah ... yeah ... it was the second *Babe* film, *Pig in the City*.

P Are you sure about that?

Timothy Yes.

P And where did you sleep that night?

Timothy Well, I had to sleep in Mark's bed, he said.

P Did anything happen?

Timothy Yeah ... he started stroking my arms which I thought was a bit weird. But he said it would help me sleep because I was worried about my mother. Then he stroked my leg and after a while he ... ah ... he rubbed my penis on the outside of my underpants.

P Did anything else happen?

Timothy He took my hand and put it on his penis.

P What did you do?

Timothy I pulled my hand away, immediately.

P And what did Mr Booth do?

Timothy He just said I needed to calm down. So he pulled off my underpants and ... um ... rubbed my penis with some oily stuff.

P And how long did he do that for?

Timothy I can't really remember. I didn't understand what he was doing. I was crying and wishing my mother could come and get me.

P Then what happened?

Timothy He rolled me over onto my stomach and ... then ... um ... he pushed his finger into my backside.

P Your anus?

Timothy Yes.

P What did you do?

Timothy I yelled out cos it really hurt ... so he stopped.

P Did anything happen on the following nights?

Timothy No, because the next morning I ran back to my place. He drove round to get me later in the day. But I'd locked all the doors. I wouldn't let him in. I told him I'd ring the police if he didn't leave.

P And did you call the police?

Timothy No, I was too scared. I knew what had happened was wrong. I thought I'd be arrested.

P And did you tell your mother?

Timothy: She didn't believe me. She liked Mr Booth. I think they went out a couple of times. And she couldn't see him doing something like that. She said I was making it up to stop her from going out with him. She said I was jealous.

P And were you?

Timothy: A bit, yeah. But, not of him. I wanted his attention, not hers. She never understood that.

P: Thank you, Mr Lyons, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mr Lyons?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

#### **Cross-examination of Timothy Lyons**

D You've told us today that in 1997, sometime in December if I can be that vague, that Mr Booth sexually assaulted you?

Timothy Yes.

D And on that night you say you watched a movie?

Timothy Yes.

D And what movie was that?

Timothy It was *Pig in the City*.

D But in your statement to the police, you said you were watching *Hercules*.

Timothy I just got confused, I think.

D So what makes you so sure it was *Pig in the City*?

Timothy Well, um, because I remember Mr Booth was imitating Farmer Hoggett and we laughed about it.

D And what would you say if I said that *Pig in the City* wasn't released until December 1998?

Timothy But that's what I remember.

D So you couldn't have watched that particular movie that night.

Timothy I don't know ... maybe it was *Hercules* ... I can't be sure now.

D I see. And where did you watch this movie?

Timothy On a TV.

D In Mr Booth's bedroom?

Timothy Yes.

D What if I was to say to you that in 1997 Mr Booth didn't have a TV in his bedroom?

Timothy Well, I remember watching a movie in his bedroom that night.

D You're sure you watched it on a TV?

Timothy Yes!

D There's no need to get upset, Mr Lyons.

Timothy I know we watched a movie that night.

D But you're not even sure what movie. And now you say it was on a TV in Mr Booth's bedroom.

Timothy Yes.

D Where was the TV located?

Timothy On top of a chest of drawers.

D I see. And what would you say if I told you the only furniture in Mr Booth's bedroom was a bed and a bedside table?

Timothy No, no, that's not right. I mean ... hang on, he had two places.

D I beg your pardon?

Timothy We had to go to his other place, it was a sort of townhouse, cos he'd left his wallet there. And that's where we had pizza and watched the movie in his bedroom.

D Are you making this up?

Timothy No, ask him, ask Mr Booth about his other place.

D This is the first I've heard about a second house. Why didn't you say this earlier?

Timothy It didn't occur to me, I wasn't asked specifically about which house.

D But it's crucial information that you haven't raised until now. This is very curious, Mr Lyons.

Timothy Only because of the TV.

D And you are absolutely sure you watched a movie that night?

Timothy Yes!

D You've also told the court today that you reported these events to your mother when they occurred in 1997



Timothy Yes.

D She didn't believe you, did she?

Timothy No.

D She didn't believe you because you'd made it up.

Timothy That's not the reason at all. She liked Mr Booth because they went out together a few times.

D You made up the whole story because you were jealous of Mr Booth. You weren't the centre of attention any more, were you? And that's what you wanted, for things to go back to just you and your Mum.

Timothy That's not true.

D Are you on talking terms with your mother, Mr Lyons?

Timothy No, not really.

D And why is that?

Timothy We argue, that's all.

D Argue? About what?

Timothy I don't know, just stuff.

D Because of Mr Booth, isn't it?

Timothy No.

D Are you lying to the court, Mr Lyons?

Timothy I'm not lying.

D But Mr Booth and your mother have been dating, recently, isn't that the case?

Timothy I wouldn't have a clue. I haven't seen my mother for a couple of years.

D And you disapprove of the relationship, don't you?

Timothy It's none of my business what she does.

D So that's why you've made up these allegations against Mr Booth, to stop her seeing him.

Timothy No! That's not the case at all.

Defence: No further questions, Your Honour.

**Judge:** Thank you, Mr Lyons, you may step down from the witness box.

*Mr Lyons exits the witness box.*

**Prosecution:** I call my next witness, your Honour, Mrs Ellen Samuels.

*Mrs Samuels enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mrs Samuels repeats the oath.*

**Examination-in-chief of Mrs Samuels**

Prosecution Please tell the court your full name, date of birth, and age.

Ellen: Ellen Maxine Samuels. I was born on 29 December 1947. I'm now 67.

Prosecution: And what is your occupation and place of work?

Ellen: I'm retired.

P: Do you know the accused, Mr Booth?

Ellen Yes, he was an acquaintance, many years ago.

P Can you explain how you came to know him?

Ellen I used to travel a lot in the 1990s, visiting family mostly, and he looked after my townhouse. He did the garden and collected my mail.

P Can you remember whether he did that for you in December 1997?

Ellen Oh yes, he did. I went overseas in December to celebrate my 50<sup>th</sup> birthday. I was away the whole month.

P And did you have a TV in your bedroom at the time, on top of a chest of drawers?

Ellen Yes, I did.

P: Thank you, Mrs Samuels, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mrs Samuels?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

**Cross-examination of Mrs Samuels**

D Mrs Samuels, did Mr Booth have the keys to your townhouse during the 1990s?

Ellen Yes, he had my spare set.

D You're sure about that?

Ellen Yes.

D But you said he only did the garden and collected your mail ... nothing else.

Ellen Well, he needed the keys to put my mail inside.

D You're absolutely sure you gave him a set of keys?

Ellen Yes. I am.

D Did you give him a set of keys every time you went away?

Ellen I think so.

D But you can't be sure?

Ellen I can't vouch for every time I went away, no. It was many years ago.

D Thank you, Your Honour, I have no further questions.

**Judge:** Thank you, Mrs Samuels, you may step down from the witness box.

*Mrs Samuels exits the witness box.*

*Ms Crown stands.*

**Prosecution:** I call my next witness, your Honour, Mr Simon Rutter.

*Mr Rutter enters the witness box and takes the oath.*

**Judges' Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Rutter repeats the oath.*

### **Examination-in-Chief of Simon Rutter**

Prosecution: Please tell the court your full name, age and date of birth.

Simon: Simon Marshall Rutter. I'm 33 and I was born on 24 February 1982.

Prosecution: And what is your occupation and place of work?

Simon: I work in a bar in the city, at the Clock Hotel. I'm a casual barman on weekends.

P: Can you tell the court how you came to join the under-12 boys' soccer team in Kogarah?

Simon: Yeah ... I think I joined in June 1993. My mum wanted me to play ... you know ... to have something to do on Saturdays when she worked.

P And when did you first meet the accused, Mr Booth?

Simon: Oh, the first day. He gave me some shorts and a t-shirt to try on. And the shorts were really tight ... I remember he grabbed me, um, in the crotch to see how tight they were.

P What happened then?

Simon: Nothing, I just remember him grabbing me but I didn't think anything of it, you know, it was in front of some other boys who also joined that day.

P What happened when soccer practise was finished for the day?

Simon: I used to wait for Mum ... but sometimes she was late. He saw me, Mark, I mean Mr Booth, he saw me waiting one day and said I could wait at his house in Gynea Bay, and he'd give me some lunch. I was starving so I agreed.

P But how did your mother know where you were?

Simon Oh, he phoned her at the shop where she worked. And then she picked me up a little while later.

P So is that what generally happened on Saturdays?

Simon: Yeah, Mark would take me back to his place for lunch and, you know, he was kind, and funny, and I felt special, you know, being looked after by the coach. So we'd have lunch and wait for Mum. Then one day he said we should have a shower together.

P Can you remember when that occurred?

Simon Um ... yeah it was the end of July.

P You said previously it was in March, is that correct?

Simon: Yeah, I did. It was so long ago but I'm sure it was July now that I think about it.

P Can you tell the court what happened next?

Simon Nothing much, Mark helped me dry myself, although it felt a bit creepy.

P Creepy?

Simon Yeah ... he just took a long time to dry me but I wouldn't let him dry my genitals.

P Was this the only time you had a shower at his place?

Simon He used to suggest having a shower each time I went to his place but I refused.

P And why was that?

Simon I don't know really, it just seemed a strange thing to be doing, having showers with the coach.

P So did you ever have another shower with him?

Simon Yeah, just one more time.

P And when was that?

Simon Around the middle of August. I remember there was ... um ... a huge thunderstorm after soccer practice. And Mark said, 'Well, you can't wait out in the rain for your Mum. You'd best come back to my place for lunch.'

P So what happened when you arrived at Mr Booth's house?

Simon We had lunch as usual although I ate half his sandwich because I was starving. He was a bit pissed off about that. Then I helped him clean out his pool after the rain stopped ... he started fooling around ... teasing me and stuff. Then he pushed me into the pool, saying that'll teach me for eating his lunch.

P With your clothes on?

Simon Yeah, it was freezing, in the middle of winter.

P What did you do?

Simon I swam to the end of the pool and climbed out. And because I was wet and shivering, Mark said, 'Look you'll have to have a shower'. I said I would but he had to stay outside.

P And what happened after that?

Simon He snuck into the bathroom when I was drying myself and reminded me that I had no dry clothes to wear. I was standing there naked with the towel and he said, 'I'll give you some dry clothes if you give me the towel'. So he finished drying me, put a t-shirt over my head and reached over my shoulder, and grabbed my penis.

P What did you do?

Simon I froze. I didn't know what to do. He said, 'Don't worry, it's just a bit of fun, it's what boys do together'.

P Then what happened?

Simon He started stroking my penis and was pressing his body against me, I could feel, you know, his ... um ... erect penis against my body.

P What did you do?

Simon I just stood there frozen. And then he started touching my bottom and I freaked and ran out the bathroom and out the front door.

P Did he follow?

Simon Yeah, he was calling out and stuff but Mum's car pulled into the driveway and I ran over and got in, and we drove off.

P Did you tell your mother what happened?

Simon Just that he'd pushed me into a freezing pool and I didn't want to go to his house again. Mum was upset as well cos I was only dressed in a t-shirt, with no shorts or undies or a jumper. She said she'd organise someone else to look after me on Saturdays.

P Why didn't you tell your mother the whole story?

Simon Because he said at the time, it was just a game ... and Mum was so happy there was someone to look after me, you see. I didn't want to upset her. Plus she was such a trusting person. She wouldn't have coped ... especially after my Dad left. It was easier if I didn't say anything. So I just kept my distance from Mr Booth.

P And one further question, do you know either of the other two complainants in this trial, Mr Justin McCutcheon or Mr Timothy Lyons?

Simon No, I don't.

Prosecution: Thank you, Mr Rutter. I have no further questions, your Honour.

*Ms Crown sits.*

**Judge:** Thank-you, Ms Crown. Mr Pearce, do you wish to cross-examine the witness?

*Mr Pearce stands.*

**Defence:** Yes, thank you, your Honour.

### **Cross-examination of Simon Rutter**

Defence: You told the court that the first occasion when you had a shower with Mr Booth was the end of July, 1993, is that correct?

Simon Yeah, that's right.

D But you said previously it was in March.

Simon Yeah.

Defence Can you explain this change of heart, if I can put it like that?

Simon It's not a change of heart ... it's just very hard to remember dates from 20 years ago. I think I was confused about when the soccer season started.

D And so how can you be so sure it was July when you joined the team?

Simon Because I now remember that when we played it was always cold. And sometimes rainy.

D So you were confused?

Simon Yes.

D I see. And how confused are you about the events you described?

Simon I'm not confused at all.

D Well, let's go over some of the details. You said that on the day you joined the team, Mr Booth apparently grabbed your crotch to see how tight your shorts were?

Simon That's right.

D So in broad daylight with other boys around, and adults in the vicinity, Mr Booth grabbed your crotch?

Simon That's what he did ... he did it with other boys too ... if they complained their shorts were tight.

D So you're alleging that Mr Booth regularly grabbed boys in the crotch in full view of other people?

Simon [defensive] I'm telling you, that's what he did.

D You also told the court that Mr Booth pushed you into his pool in the middle of August after a huge thunderstorm, is that correct?

Simon Yes.

D But in the middle of August 1993, there was virtually no rain, in fact, weather records show that August was completely dry from the 11<sup>th</sup> to the 25<sup>th</sup> of August. That is, 15 days in a row without rain. What do you say to that?

Simon But I remember a thunderstorm.

D And are you also aware that Mr Booth didn't own a house with a pool in July 1993?

Simon Um ... but that's what I remember. The last time I went to his house was the day he pushed me into the pool.

D In fact, Mr Booth didn't own a house with a pool until 1997. That is, four years later.

Simon Well, it must've been another pool, maybe next door or something.

D But none of the houses in Mr Booth's street had a pool in 1993. So everything you've said today about being pushed into a swimming pool is a pack of lies.

Simon No, it's not!

D You were a bit of handful, weren't you? After your father left your mother?

Simon: I don't know what you mean.

D You were uncontrollable, weren't you? Wagging school, lying to your mother, sometimes lying to Mr Booth about missing soccer training.

Simon That's rubbish.

D There's no need to get upset, Mr Rutter. I'm merely trying to establish what really happened. [pause] So, tell me, you're not in full-time employment?

Simon No.

D Is there a reason?

*Ms Crown stands.*

Prosecution Your Honour I object ... I can't see the relevance of that question.

Judge Mr Pearce?

*Ms Crown sits.*

D The reasons will soon become apparent, Your Honour, if you will allow me to proceed.

Judge Very well, Mr Pearce, you may continue.

D Mr Rutter ... you just told the court that you're not employed full-time. Is there a reason?

Simon Just that I can't get a full-time job.

D And have you tried?

Simon Yeah, of course.

D And how long have you been out of full-time work?

Simon I don't know, it varies ... sometimes I get full-time work for a few weeks, then I'm back to weekends and then I'll fill in for someone else when they're away ... that kind of thing.

D And how many years has this been going on?

Simon Five or so.

D Is it because you're difficult to work with?

Simon *No.*

D So your income has been unstable for a number of years?

Simon Kind of, I mean I earn enough with penalty rates to get by.

D I see ... to get by. But you have expenses, don't you? Rent? Car? Bills? Food?

Simon Yeah, like everyone else.

D Surely you must run short of money at times?

Simon No, I get by.

D But more money would come in handy, wouldn't it?

Simon Yeah, if I was earning as much as you are, asking me these questions.

D Indeed ... one way would be a victim's compensation claim, would it not?

Simon Not for that reason.

D Well, what reason? If not to improve your income ... isn't that the reason why you've made all these allegations against Mr Booth?

Simon No, I—

D Because by making up these allegations you can then claim \$15,000.

Simon That's not the reason.

D I can understand Mr Rutter, you're casually employed, not sure if you can pay all your bills from week to week—

Simon Not true—



D And then someone suggests to you that if you make up allegations against your old soccer coach, you can put in a victim's compensation claim.

Simon No, that's not the case.

D I have no further questions, Your Honour.

*Mr Pearce sits.*

**Judge** Would you like to re-examine your witness, Ms Crown?

*Ms Crown stands.*

### **Re-examination of Simon Rutter**

**Prosecution** Yes, thank you, your Honour.

**P** Simon, I know these events took place a long time ago but can you remember whether Mr Booth had a pool back in July 1993?

Simon What I remember clearly is the storm and when it stopped, Mr Booth taking a key off a hook in his kitchen and saying, 'Come on, we'll go clean the pool'. He unlocked a gate outside and we went into a courtyard where there was a pool. I had no reason to think it wasn't his. He said nothing about a neighbour.

**P** And how sure are you that he pushed you into the pool?

Simon Absolutely sure. The last thing I wanted to do was go swimming in the freezing cold.

**P** And one other matter, Simon, when did you first go to the police with your allegations?

Simon Two years ago.

**P** What was the reason?

Simon I saw him ... Mr Booth, in the city one night and it just brought it all back, all those years ago and I just realised, my God, he's gotten away with it.

**P** Was it also because you could then apply for victim's compensation?

Simon No, of course not.

**P** Thank you, Simon. I have no further questions, Your Honour.

**Judge:** You may step down from the witness-box, Mr Rutter.

*Simon exits the witness box. Ms Crown stands.*

**Prosecution:** I call my next witness, your Honour, Mr Justin McCutcheon.

*Mr McCutcheon enters the witness box and takes the oath.*

**Judges' Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr McCutcheon repeats the oath.*

**Examination-in-chief of Justin McCutcheon**

Prosecution: Please tell the court your full name, date of birth, and age.

Justin: My name is Justin Paul McCutcheon and I'm 30. I was born on 3 March 1985.

Prosecution: And what's your occupation and place of work?

Justin: I'm a sales manager at Custom Built Kitchens in Manly.

P: Mr McCutcheon, I'd like to take you back to the time when you joined the under-12 boys' soccer team in Kogarah. Do you remember the year you joined?

Justin: It was sometime in 1995.

P: And how old were then?

Justin: I was 10 when I joined up.

P: Is this when you met Mr Mark Booth?

Justin: Yeah, he was the coach and my Dad sort of knew him, but not very well.

P: So your father and Mr Booth weren't close friends at the time?

Justin: Not at first but they became friends. I mean they always talked after soccer training and then Dad started asking him over to our house, you know, for a drink or a barbecue ... that kind of thing.

P: Was that the only contact you had with Mr Booth outside of soccer training?

Justin: No ... later on that year I sometimes went to the movies with him and we went to the local swimming pool a bit because he was teaching me to swim. My Dad travelled a lot for work, so Mark offered to take me out when Dad was away.

P: And how did you feel about that?

Justin: Oh, it was great, like I had two fathers, you know, I just loved it. I had someone to go out with cos Mum was always busy with my younger sisters.

P: Were there other times you spent with Mr Booth?

Justin: Yeah, I stayed at his apartment one time after a late night movie. Mum said that I could sleep at his place.

P: And when was that?

Justin: Oh, it would've been later in the year ... um, September I think, yeah, sometime in September, maybe October, because we were, like, near the end of the soccer season.

P: Can you tell the court what happened that night?

Justin Yeah, Mark didn't have a spare bed so I had to share his bed. I remember when I was undressing he told me I had to take all my clothes off ... like my singlet and underpants as well because that's what men did.

P And did you?

Justin Yeah.

P And what happened then?

Justin Well, he was always playing jokes and horsing around, tickling and stuff. I pushed him away but then he started playing a game with my privates, saying things like, 'What's this down here?' And I just thought he was being funny, you know, and then he started, like, rubbing my penis while he got me, I mean, he, um, grabbed my hand and put it on his penis and showed me how to rub it.

P And did you masturbate his penis?

Justin Kind of but only with his hand on top of mine. I didn't want to. I felt sick ... I didn't know what he wanted me to do. He said I wasn't doing it properly, he got a bit annoyed so he took over, and did it himself.

P And during this time, did he also continue to masturbate you?

Justin Yeah.

P And how long did this go on for?

Justin Oh, God it's hard to say. 30 minutes, an hour ... like it's really hard to remember. I was just so shocked. It seemed to go on and on forever.

P Did you try to stop him?

Justin I couldn't. He was holding my penis. Whenever I moved, he gripped it harder and I thought Christ, if I try to pull away he'll rip it off.

P What happened after that?

Justin I pretended to sleep. I didn't say anything and he didn't either.

P Did you tell your parents?

Justin No way! He was like my Dad's best friend, you know, they'd become really good mates. And my Dad ... like, there's no way he would've believed me.

P Did you see Mr Booth after this incident?

Justin Yeah, about a week later. He took me to the Caringbah swimming pool and, um, on the way home he stopped his car in a park.

P What happened in the park?

Justin He ... um ... he asked me how I was feeling after our ... um ... 'fun time in bed together'.

P What did you say?

Justin Nothing, I just, like, shrugged my shoulders. I couldn't look at him.

P What happened then?

Justin He took my hand, unzipped his trousers and put my hand on his penis.

P What did you do?

Justin [sighs] Um, he tried to get me, you know, to rub it but I didn't want to. So he put his hand behind my head and pulled my head down to his crotch.

P And then what happened?

Justin [starts to cry] He forced his penis into my mouth and I was choking and—

P It's alright, Justin. Would you like to take a break?

Justin No, no, I'm fine. [Justin composes himself, wipes his eyes.] I choked on it, you see, and I cried so he let me go.

P What happened then?

Justin He just said, 'Remember this is our secret, Justin. I could get into big trouble if you tell anyone. And so could your Mum and Dad'. So I promised I'd never say a thing.

P So you never told your parents?

Justin No. Though Mum knew something was wrong because I changed completely after it all and she kept trying to find out what was wrong.

P Can you explain how you changed?

Justine I became really argumentative and angry, wagging school, and lying to my teachers.

P Was that all?

Justin Oh, Dad and I had all these arguments about Mark. I just refused to go to his place or get into his car. I even tried to get out of swimming lessons with Mark but Dad insisted. So I caught the bus to the swimming pool instead. And Mum picked me up when she could but it was all behind Dad's back.

P Why was that?

Justin Because Dad wouldn't have accepted that a mate of his could've done something. So she did what she could.

P And one final question, do you know either of the other two complainants in this trial, Mr Simon Rutter or Mr Timothy Lyons?

Simon No, I don't.

Prosecution: Thank you, Mr McCutcheon, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mr McCutcheon?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

**Cross-examination of Justin McCutcheon**

Defence: In your evidence today, Mr McCutcheon, you said that Mr Booth was masturbating your penis for about an hour?

Justin Yeah, maybe half an hour, an hour, it's hard to say.

D So you're saying that he's got hold of your penis and his own and masturbating both for about an hour, is that right?

Justin Well, I said it was hard to say how long exactly.

D Alright. So you've got the accused, Mr Booth, with an erection for an hour, maybe longer?

Justin Yeah, maybe.

D And during this time you just lay there, for an hour, maybe longer, we don't know exactly, you just lay there and did nothing?

Justin I couldn't ... I froze ... I was scared, I didn't know what to do to be honest.

D And did you have an erection?

Justin Not at first ... but yeah, eventually.

D You were frozen, scared but you managed to have an erection, is that correct?

Justin There were so many emotions—

D So many emotions that none of them enabled you to say, 'Stop!', and leap out of the bed?

Justin I wanted to but I couldn't.

D So many emotions that you couldn't tell either of your parents what happened?

Justin No.

D Even after the incident in the park, despite that, you said nothing?

Justin No.

D And yet you told the court that in broad daylight, in public, and out of the blue, Mr Booth forced his penis into your mouth.

Justin That's what happened.

D Yet you said nothing and apparently have harboured this secret for, what, 20 years?

Justin Not exactly ... I told my best friend at school at the time.

D And what came of that?

Justin Nothing, I didn't want him to tell anyone.

D But isn't it the case that you continued to go swimming with Mr Booth?

Justin I couldn't get out of it.

D But you were happy to get into his car?

Justin Only once, I think ... I caught the bus generally which he didn't like.

D But surely your parents must've wondered why you were catching a bus?

Justin Yeah, but I made up some story.

D So you're good at making up stories, are you?

Justin This is not a story.

D And what about the stories you made up at school?

Justin I don't know what you mean.

D Your school records show that you were suspended from school on two occasions.

Justin What's that got to do with anything?

D For making up stories, wasn't it?

Justin But it was after what Mark did to me—

D You were suspended for writing letters apparently signed by your parents, isn't that the case?

Justin Yes.

D And who signed the letters?

Justin I did.

D So you forged your parents' signatures?

Justin Yes.

D And just like you did back then, in your carefully crafted and forged letters, everything you've said today is a pack of lies, isn't it?

Justin I am not lying!

D You resented Mr Booth's friendship with your father, isn't that the case?

Justin No.

D They didn't include you when they were together, did they?

Justin Sometimes, they did ... I mean they just talked about sport and watched TV.

D But only sometimes so you felt left out when they were together, didn't you?

Justin I don't know. Maybe. But you know, I was a kid, I was just happy just being around them.

D Thank you, your Honour. I have no further questions for this witness.

*Mr Pearce sits.*

**Judge:** You may step down from the witness-box, Mr McCutcheon.

*Justin exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Ms Crown?

*Ms Crown stands.*

**Prosecution:** No, Your Honour, that concludes the case for the prosecution.

*Ms Crown sits.*

**Judge:** Mr Pearce, do you wish to call any witnesses?

*Mr Pearce stands.*

**Defence:** Yes, Your Honour. I call Mr Mark Booth.

*Mr Booth enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Booth repeats the oath.*

**NB THE ORDER OF MARK BOOTH'S EVIDENCE HAS CHANGED CF TO CONDITION 6  
and some changes to the questions below**

**Examination-in-chief of Mark Booth**

D Please tell the court your full name, date of birth, and age.

Mark Mark Robert Booth. I was born on 13 August 1957. I'm 57.

D What is your occupation and place of work?

Mark I'm a self-employed construction manager.

D I'd like to take you back to May 1997 when Timothy Lyons joined the soccer team. At this time, did you take a group of boys to McDonald's after the soccer game?

Mark Yes.

D Why was that?

Mark I had a team that year who weren't much good at soccer. So I think it started with me saying to one of them, look if you try really hard I'll take you to McDonald's for lunch. And then it just grew from there so I'd take just five or six if they played really well that day.

D Did the parents give their permission?

Mark Oh yes, I always made sure of that.

D How did they get home?

Mark Either I drove them or their parents came and picked them up.

D How did you meet Timothy Lyons' mother?

Mark She invited me in for a cup of tea when I dropped Timothy off.

D Were you ever alone with Timothy during these visits?

Mark Not that I recall.

D Were you ever alone on the back porch with him while Mrs Lyons was in the kitchen?

Mark I wouldn't call it alone, the kitchen opened up onto the back porch. She could see us the whole time.

D Did you ever put make suggestive comments to Timothy during these visits about your sexual interest in his mother?

Mark Definitely not. The suggestion is ridiculous ... we were in full view of his mother whenever she was in the kitchen.

D What was your relationship with her?

Mark We went out a few times, that's all, nothing serious.

D But you offered to look after Timothy when she went to hospital?

Mark Yeah, she asked me. I really couldn't say no, I mean, she needed help and someone had to take care of the boy.

D So he stayed at your place, is that correct?

Mark Yes.

D Did Timothy share your bed?

Mark No, he slept on the couch although he was very worried about his mother, I remember, so I sat with him until he fell asleep.

D Did you watch a video on a TV in your bedroom?

Mark No.



D Are you sure?

Mark Absolutely sure, I've never had a TV in my bedroom.

D Did you have a second residence at that time?

Mark No.

D But you were looking after the townhouse of Mrs Ellen Samuels at this time?

Mark Yes.

D Did you have a key to her townhouse?

Mark Not that I recall.

D Did she give you a key so that you could deposit her mail inside?

Mark No, I used to slide it under the front door.

D So when Timothy stayed with you, you're sure that you slept in your own residence?

Mark Absolutely.

D Did you touch his penis?

Mark No, I certainly did not.

D Did you take his hand and place it on your penis?

Mark No I did not.

D Did you rub his penis with an oily substance?

Mark No, the thought is repugnant.

D Did you at any stage that night insert your finger into Timothy's anus?

Mark Certainly not.

D Did Timothy stay another night at your residence?

Mark No, I took him to the hospital the next day.

D Why was that?

Mark He was worried about his mother even though I said that we would visit her once the operation was over but he wouldn't listen.

D Did you try to reason with him?

Mark Sure, but he was just a scared kid. He was determined to visit the hospital and that was that. So in the end I took him there but he wanted to stay. I think they organised a bed for him in her room.

D Can you tell the court the nature of your relationship with Timothy's mother today?

Mark We've been seeing each other, on and off, for the past couple of years.

D And does Timothy know about this relationship?

Mark He certainly does.

D What was his reaction when he found out?

Mark My understanding is that he does not approve.

D And what have been the consequences?

Mark He refuses to see his mother and me.

D I see. Now I'd like to take you back to June 1993 when Simon Rutter joined the under-12 boys soccer team in Kogarah. Were you still the coach at the time?

Mark Yes, I was.

D Do you remember meeting Simon?

Mark I don't remember the actual day he joined, no.

D Can you explain the joining up process for the court?

Mark Sure, there was a form to fill in which the boy's parents had to sign and then he got a uniform.

D And who gave out the uniform?

Mark I did.

D Were the boys' parents present?

Mark Oh yes, there was always a Mum or Dad helping the boy try on the shorts and shirt.

D Were you part of that process?

Mark No, I left it to the parents. If the uniform didn't fit, I gave them another size.

D Were you in the habit of grabbing the crotch of a new boy to see how tight his shorts were?

Mark Certainly not.

D Are you sure?

Mark [laughs] In front of a boy's parents? That's absurd. I certainly did not.

D Now ... I understand you befriended Simon Rutter.

Mark Yes, that's right.

D Why was that?

Mark He was always alone at the end of soccer training, I mean all the other kids, their parents were watching the game or they turned to collect them. But Simon had to wait for his Mum who worked on Saturdays.

D So what did you do?

Mark I felt sorry for him, waiting on his own, so I offered him lunch one day at my place and we phoned Mrs Rutter and got her approval.

D And it became a regular thing?

Mark Yeah. It helped her because she never knew what time she'd be finishing work so this way, she didn't have to race or get someone to fill in for her, and Simon wasn't hanging out on the street alone.

D And did Simon ever have a shower at your house?

Mark No, not that I can remember.

D So the two of you *didn't* shower together?

Mark God no.

D So on no occasion did you shower with Simon and offer to dry him with a towel?

Mark No, definitely not.

D And on no occasion did you masturbate his penis or press your body against his?

Mark No, I'm not interested in young boys.

D Did you push Simon into a swimming pool in the middle of August after a thunderstorm?

Mark I don't remember a particular thunderstorm but I didn't have a swimming pool in 1993.

D You're sure about that?

Mark Absolutely. I still have the documents for the sale of that house and there is no swimming pool on the plans.

D What about your neighbours, did they own a pool?

Mark No-one in our street had a pool.

D How would you describe Simon at the time?

Mark He was a bit of handful at times, didn't like being told what to do, what not to do, that kind of thing. Sometimes a bit loose with the truth.

D Alright ... now I'd like to take you back to 1995. That was the year in which Justin McCutcheon joined the soccer team and you became friends with his father, is that right?

Mark Yeah, although I already knew his Dad, Peter.

D Were you close friends?

Mark Not really but he used to corner me after soccer training—

D Corner you?

Mark He was mad about football, would talk the legs off a donkey. We used to argue about different teams but in a friendly way. He invited back to his place for drinks or dinner occasionally, you know, and we became pretty good mates.

D And what was your relationship with Justin?

Mark Oh, I was kind of like an uncle, I guess, because Peter travelled a lot. He was a pilot so he asked me to take Justin for swimming lessons, sometimes we went to the movies, game of cricket, you know, father/son type things.

D All of this was with both parents' approval?

Mark Oh yeah, life was full on in their family with Peter away for five days at a stretch, sometimes. Mrs McCutcheon needed help, what with a family of three kids. It was the least I could do.

D Did Justin ever sleep at your house?

Mark Yeah a couple of times I think.

D Where did he sleep?

Mark Oh, he always slept on the couch.

D You didn't share your bed with him, the two of you together?

Mark Certainly not, I don't think his parents would've approved of that.

D Did you ever touch or masturbate Justin's penis?

Mark No, never.

D And did you ever try to get him to touch your penis?

Mark Good Lord, no.

D Did you ever force your penis into his mouth?

Mark Absolutely not. Look, the McCutcheons were friends of mine. They'd invited me into their family and I enjoyed their company. I wasn't about to betray their trust in any way, I can assure you.

D Thank you, Your Honour, I have no further questions.

*Mr Pearce sits.*

**Judge:** Ms Crown, would you like to cross-examine Mr Booth?

Prosecution: Yes, thank you, Your Honour.

*Ms Crown stands.*

**NB THE ORDER OF THE EVIDENCE BELOW IS DIFFERENT TO CONDITION 6 WITH SOME CHANGES TO EVIDENCE**

**Cross-examination of Mark Booth**

P Mr Booth, the parents of Timothy, Simon and Justin, you assisted them all in some way with their sons, did you not?

Mark I suppose I did.

P But that's your evidence, Mr Booth. You agreed to look after Timothy while his mother was in hospital, you acted as a baby-sitter for Mrs Rutter until she finished work on Saturdays and you acted as an uncle or father figure to Justin. All families you hardly knew.

Mark I don't see your point.

P My point is that you were grooming families you'd never met before or knew vaguely in order to get access to their sons.

Mark That's rubbish, I was doing them a favour, that's all.

P And after offering to assist these parents, you then got permission to take their sons back to your home where each boy was sexually abused.

Mark That's not true.

P Each boy was made to feel special— Timothy was one of the special boys you took to McDonald's after training, Simon was the lonely boy whom you took home to feed, and Justin was the boy in a large family whose Dad was away a lot and needed a father figure.

Mark There's nothing wrong with making a young boy feel special.

P Except when it's for criminal purposes.

Mark That wasn't the reason.

P Well, let's look at the circumstances. Timothy Lyons was one of the special boys you took to McDonald's. You must've known the effect on Timothy as one of your special boys. He doesn't have a father and now suddenly he has you to look up to.

Mark It's normal for the boys in a soccer team to look up to the coach.

P Which allowed you to take advantage of them.

Mark That's not what happened.

P Mrs Lyons must've placed a lot of trust in you when she asked you to look after him.

Mark Yes, I suppose she did.

P And why did you want to help out a woman you hardly knew?

Mark Well, I was attracted to her, I wanted to impress her, I guess.

P Did she ask you or did you offer?

Mark She asked me.

P But it doesn't make sense—a young boy whose mother is in hospital suddenly runs away from your place and goes back home even though he knows no-one is there to look after him.

Mark That's not what happened—Timothy was panicked about his mother. He was determined to visit her. So I took him to the hospital.

P Did you see Mrs Lyons?

Mark No, I wasn't allowed because I wasn't a relative.

P Did you contact her after she came out of hospital?

Mark No.

P Why not?

Mark I can't remember.

P You can't remember? A woman you were attracted to, whose son you'd looked after, you didn't try to find out how she was?

Mark I think she rang me.

P You can't remember because there was no further contact, was there, after what you had done to her son?

Mark No, that's not true.

P And then there's Mrs Rutter who was pleased that you were looking after Simon but then abruptly, the baby-sitting stopped, Mr Booth. Why was that?

Mark I don't know ... well ... I have a theory but I don't know for sure.

P Yes?

Mark All I can think is that he made up some reason ... lied to his mother I guess ... I don't know. Without a dad, he was a young rebel and sometimes I had to bring him into line and he just didn't like it.

P But he was a lonely boy, you were the coach, you'd made him feel special. It doesn't make sense he would want to stop being special and return to being the lonely boy waiting for his mother.

Mark But he wanted being looked after on his terms.

P Did you ever phone Mrs Rutter to find out why there was no further contact?

Mark No.

P Why not?

Mark Look, I had 11 boys in the team, I couldn't be expected to follow each one up.

P But Simon was the one you took back to your place. You said you wanted to help Mrs Rutter, why wouldn't you want to continue doing that?

Mark I tried, it didn't work out. Move on.

P Move on because you'd sexually abused her son and you didn't know what he'd told her.

Mark That's not true.

P Well, what about Justin? You'd become best mates with Peter McCutcheon, filling in as a father figure when he was away, Justin is on top of the world, in his words he's got two fathers and then suddenly he no longer wants to have anything to do with you. He won't get into your car, won't go back to your place anymore and his mother has to arrange to pick him up from the swimming pool when she's got two other children to look after. Why was that?

Mark That's not how I remember things. He stayed in the soccer team until he was 11 or 12, I can't remember now, and when he left, I just didn't have contact with him anymore.

P What about the family?

Mark Yeah, that dropped off as well which was quite normal really.

P But Peter was your best mate. You'd become part of the family.

Mark That's true but kids come and go and so do their families.

P That just doesn't add up, Mr Booth.

Mark We just drifted apart after Justin left the team. It was normal. I had other boys and parents to deal with.

P There's a pattern here, Mr Booth, of you insinuating yourself into the lives of three families, helping out mothers in need, getting them to trust you so that you can take their boys to your place and then the boys no longer want to have anything to do with you. The coach that everyone trusts, the father figure, the saviour, and suddenly everything turns sour.

Mark That's not how it was.

P Because you took advantage of everyone's trust.

Mark No! That's not true.

P I have no further questions, your Honour.

**Judge:** Thank you, Mr Booth, you may step down from the witness box.

*Mr Booth exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Mr Pearce?

**Defence:** No, Your Honour, that concludes the case for the accused.

*Mr Pearce sits.*

**Judge:** Very well, I take it you are both ready to present your closing addresses?

*Ms Crown stands.*

**Prosecution:** Yes, Your Honour.

*Ms Crown sits. Mr Pearce stands.*

**Defence:** Yes, Your Honour.

*Mr Pearce sits.*

**Judge:** You may now address the jury, Ms Crown.

*Ms Crown stands.*

### **Prosecution's Closing Address to the Jury**

Thank you Ladies and Gentlemen, for your attention during this trial. It's now time for me to summarise the Crown's case against Mr Booth. You'll remember that Mr Booth has been charged with two counts of sexual assault against Mr Timothy Lyons, the complainant. I will deal with each count separately to make things easier for you.

Count 1 is act of indecency towards a person under the age of 16 years, namely Timothy Lyons. You will vividly remember the testimony of Timothy who described the pizza Mr Booth bought for him and how they watched a movie together. Then when Mr Booth had got Timothy into his bed, he took advantage of him, touching his genitals and trying to persuade Timothy to touch Mr Booth's penis. When that didn't work, Mr Booth used an oily substance to rub Timothy's penis on the pretext of calming him down. All the while Timothy cried, wishing his mother would come to rescue him. This assault was clearly indecent according to community standards.

The next count is count 2. You'll remember Timothy's testimony about the hospitalisation of his mother and how Mr Booth offered to take care of him. Recall the events of that night in December 1997 when Timothy had to share Mr Booth's bed. While he had Timothy under his care, rather than looking after his welfare Mr Booth took advantage of Timothy's vulnerability. He turned Timothy onto his stomach and inserted a finger into Timothy's anus until young Timothy cried out in pain and distress. This sexual act is defined as sexual intercourse under our Crimes Act.

When questioned about his evidence, Mr Lyons did not waver in relation to where these assaults occurred and the circumstances in which they occurred, even though he may have been confused about the particular video he watched with the accused. When challenged about the furniture in the accused's bedroom, Mr Lyons revealed he had been taken to another residence in which there *was* a TV on top of a chest of drawers in the bedroom. You heard the evidence of Mrs Ellen Samuels who confirmed that her bedroom had identical furniture at a time when she was overseas and that the accused had a key to her townhouse.

You also heard the evidence from two other witnesses, both of whom were members the under-12 Kogarah soccer team in the 1990s. Both of these witnesses testified that they, too, had been sexually assaulted by the accused when he was their soccer coach.

Simon Rutter explained that, at the age of 11, the accused masturbated Simon's penis in his bathroom in August 1993, as he pressed his body against Simon. Mr Booth took Simon into his home on the pretext of providing lunch in order to help out Simon's single mother. Mr Booth took advantage of the fact that Simon was alone, that he was isolated from his family and friends, and after he had pushed him into a freezing cold swimming pool, the accused masturbated Simon's penis. You'll also remember that Simon's testimony was



totally unshaken during cross-examination even when it was suggested to him that he had fabricated his allegation of sexual assault in order to make a claim for victims' compensation. He denied that motivation and gave a credible explanation as to why he is giving evidence some years later. You can use Simon Rutter's testimony to corroborate the evidence of Timothy Lyons, the complainant in this case.

Justin McCutcheon also explained that at the age of 10, Mr Booth became a second father to him while his real father travelled for work. Mr Booth stepped into the breach, having becoming close friends with Justin's father, and offered what any family would want, someone to take their eldest son under his wing. You heard Justin's testimony about how his trust and the trust of Justin's whole family was betrayed on that occasion in Mr Booth's bed when Mr Booth took Justin's hand and placed it on his own penis, forcing him to masturbate it. Justin described how Mr Booth masturbated Justin's penis and his own for at least half an hour, while Justin lay there frozen, frightened, trapped, shocked and utterly confused.

You'll also remember Justin's harrowing testimony about how his innocence was terribly and irrevocably lost on that occasion when Mr Booth parked his car, pushed Justin's head into his lap and forced his penis into Justin's mouth. Justin described how after these assaults his personality totally changed. Even though Justin kept Mr Booth's secret, he did everything he could to protect himself from this man, a man he could no longer trust, whose car he knew he could no longer risk getting into, even to go to the swimming pool. Justin's personality totally changed. As he explained, he became argumentative and angry, wagging school, lying to his teachers. You can also use Justin McCutcheon's testimony to corroborate the evidence of the complainant, Timothy Lyons.

The three young men who have given evidence in this trial have had no contact with each other. They did not know each other during the time they were members of the under-12 Kogarah soccer team in different years. But they describe similar patterns of behaviour by Mr Booth. Each of them suddenly stopped seeing Mr Booth even though he was a father figure in their lives. You have to ask yourselves, why? And why did Mr Booth not contact the boys' parents again?

The Crown's case is that Mr Booth is a serial sex offender who groomed young boys and their families in order to get the boys alone so he could satisfy his sexual desires. This means that the accused had a tendency to act in particular ways. You can use the evidence from Simon Rutter and Justin McCutcheon if you find beyond reasonable doubt that that tendency is proved on the basis of either Simon's evidence or on the basis of both Simon's and Justin's evidence.

The tendencies I am talking about are Mr Booth's patterns of behaviour that can be gleaned from the evidence of Simon, Justin and Timothy—a pattern showing the accused's sexual interest in young boys, how he used his position as soccer coach to gain access to them, and then took them to his house, or in his car, where he sexually assaulted them. The accused does not deny that, as their coach, he built up a relationship of friendship and trust with their families. He admitted offering to help Mrs Rutter, by baby-sitting Simon on Saturdays. He befriended Justin's father, socialised with the McCutcheons and then offered to take Justin out on weekends when Justin's father was away. He drank tea with Mrs Lyons, and even went on a few dates with her. He made sure that each of the three families trusted him, that the boys trusted him and viewed him as a fun, father figure.

All three boys were missing a father figure in their lives. Timothy's and Simon's fathers don't live with them. Justin's father is away a lot. Mr Booth noticed this, giving each boy special attention, providing meals, or special outings, becoming a surrogate father for each boy.

He then created opportunities where he could be alone with the boys. He took Timothy to stay with him when Mrs Lyons was in hospital. He took Simon back to his house for lunch after soccer training. He took Justin to the movies and got Mrs McCutcheon's permission for Justin to sleep over after a movie. He drove Justin to and from the swimming pool in his car and used that opportunity to get Justin alone in his car.

When he first started touching the boys, it was affectionate or playful touch—an arm around the shoulder, ruffling of the hair or a grab in the crotch to see if the boy's shorts were too tight. Gradually, he sexualised

each of the relationships, creating secretive sexual games. He made suggestive remarks or played with their penises in a joking way as if it was what all boys and men did together. He got all three of the boys naked, either in the shower, or in his own bed. All of this shows the slow build up towards the next stage where the accused makes more serious sexual contact with each boy, making sure they are comfortable with what appears to be playful touching.

This pattern of behaviour proves a tendency to act in a particular way—to befriend a young boy’s mother or father, to gain their trust, to offer to become the boy’s surrogate father, to create opportunities where he could be alone with each one, to sexualise the relationship with each boy before finally engaging in sexual acts with them. The pattern that emerges with Timothy is repeated with Simon and repeated again with Justin. When the boys no longer want anything to do with him, he ceases contact with them and their parents.

Ladies and Gentlemen, the evidence against Mr Booth is overwhelming. While the facts are shocking the case is straight-forward. Don’t accept the accused’s denials in the face of this harrowing evidence. On the basis of Timothy’s unshakeable evidence, along with the evidence of the three witnesses in this trial, Mrs Ellen Samuels, Simon Rutter and Justin McCutcheon, you will find that the elements of counts 1 and 2 are proved beyond reasonable doubt. You should find Mr Booth guilty on both counts.

Thank you your Honour.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. Mr Pearce, you may make your closing statement to the jury.

*Mr Pearce stands.*

**Defence:** Thank you your Honour.

### **Defence’s Closing Address to the Jury**

Ladies and Gentlemen of the jury, I also want to thank you for your attention in this trial. I want to remind you of the presumption of innocence which means that the accused is innocent until you decide otherwise. You should *only* find him guilty if the prosecution evidence is so convincing that there is no reasonable doubt in your minds.

The complainant along with the two witnesses, Simon Rutter, Justin McCutcheon, have accused my client of a number of very serious offences when they were in his care. Your job is to carefully and methodically examine their credibility and the reliability of their evidence. Are they credible witnesses? Is all their evidence reliable? Could they be mistaken about certain events? Because in reality their evidence just doesn’t stack up. So you must consider whether they’ve fabricated their allegations.

First of all, the evidence of Timothy Lyons just doesn’t stand up to scrutiny. He couldn’t be sure which movie he watched the night he said terrible things happened to him. Then he said that he’d watched a movie released one year later on a TV in Mr Booth’s bedroom even though Mr Booth didn’t have a TV in his bedroom at the time. Finally, Timothy reveals, for the very first time, that Mr Booth had *two* houses, *two* bedrooms, something he’d never even mentioned before. Why not? Wouldn’t that be one of the things that would stick in your mind? This unusual situation where a man has two bedrooms? And when Timothy told his mother that Mr Booth had sexually abused him, his mother didn’t believe him. Why was that? Was it because she could see through the lies, to a young boy’s attempt to stop his mother from seeing her boyfriend so his life could go back to normal? So he could be the centre of attention once more? Although Timothy denied it, he knows that the accused and his mother have been seeing each other for the past couple of years. His disapproval of this relationship is so great, Ladies and Gentlemen, that it should be enough to raise reasonable doubts in your minds in relation to both counts with which my client has been charged.

Then we have Simon Rutter who got his dates all confused—first it was March 1993 and then it became July 1993. How can someone, in relation to something as serious as his allegations, get the dates so fundamentally confused? That is what you have to ask yourselves, Ladies and Gentlemen.

Not only that, Simon expects you to believe that his first contact with Mr Booth was when my client, in broad daylight, in front of other children and adults, grabbed Simon's crotch to see how tight his shorts were and that this was something he did regularly with other boys. I'm afraid it beggars belief that a soccer coach would do such a thing in public. This should be enough to make you question the whole of Simon's evidence. As Mr Booth said in his evidence, it's absurd. But there are other reasons why you should question Simon's evidence. Simon was not pushed into a swimming pool after a thunderstorm by Mr Booth as an apparent excuse to force him into having a shower because there *was* no such swimming pool. And there could not have been a thunderstorm since no rain was recorded for 15 days in the middle of August in 1993. Mr Booth did not own a house with a swimming pool in 1993, nor did any of the neighbours in his street. Around the age of 12, Simon Rutter was nothing short of a handful, as Mr Booth explained. Maybe there are good reasons why a young boy would be like this—his father isn't around, he lives alone with his mother, he's become the man of the house after his father left, he doesn't like being told what to do and when Mr Booth tries to set boundaries, Simon can't cope. You also heard today that Simon had another very good reason to make up his allegations against Mr Booth. His victim's compensation claim will make his life a lot easier by relieving his financial stress because he has a long history of casual and unstable work, something to take into account when assessing the credibility of Simon as a witness.

Then we have the evidence of Justin McCutcheon who wants you to believe that Mr Booth, the man who befriended his family, would suddenly, out of the blue, fondle Justin's penis in circumstances where Mr Booth had been given the responsibility for looking after Justin, when Justin's mother had placed her complete trust in him, and Justin's father, the trust of a good mate. We're asked to believe that Mr Booth betrayed this trust and lay in bed with him for an hour, maybe longer, masturbating himself and Justin. Yet Justin told you that he stayed in the bed, he didn't try to get away, he didn't try to stop what was happening to him. He wasn't a baby, he was an 11 year old boy with a mind of his own.

Then a week after the alleged sexual assault, Justin willingly gets get into Mr Booth's car to go swimming. And again, out of the blue, you are asked to believe that Mr Booth stopped in a park in broad daylight, in public, and forced his penis into Justin's mouth when Justin was in his care, with his parents' blessing. Around this time, Justin was a proven liar, wagging school and forging his parents' signatures to explain his absences. A boy who was good at making up stories. So you have to ask yourselves, Ladies and Gentlemen, is that what Justin's evidence is? An elaborate story? A pack of lies? Justin admitted he was quite a feisty boy at the time, argumentative, causing a lot of trouble for his parents. If something had happened why didn't he tell his worried mother? And if he was so feisty back then why didn't he try to stop the sexual abuse? Why did he willingly get into Mr Booth's car? Why didn't he become argumentative and difficult with Mr Booth if that's what really happened?

I ask you to consider the glaring inconsistencies in the evidence of these three men, their confusion in relation to key details, the inconsistencies in their behaviour at the time. The prosecution's entire case rests on the unreliable testimony of one complainant and two witnesses who all had reasons to fabricate their evidence. These inconsistencies should be enough to raise reasonable doubts in your minds in relation to the two counts with which my client has been charged.

Finally, you heard Mr Booth's clear denials when he gave evidence. He did not waver under cross-examination. He simply befriended each family because they needed assistance with their sons which he willingly gave. This assistance is entirely consistent with his voluntary work as a soccer coach throughout the 1990s. He was a friend to these families and to their sons. They enjoyed each other's company in a father/son type relationship and then when the boys left the soccer team at the age of 12 years, it was quite normal for that contact to drop off.

When you consider all the evidence together, you will see that there are just too many reasonable doubts, Ladies and Gentlemen. For that reason, you must acquit my client, Mr Booth, of both counts of sexual assault.

Thank you your Honour.

*Mr Pearce sits.*

**Judge's summing up:**

**Judge:** Members of the jury, it is for you to assess the evidence of the Crown witnesses and the accused. You are not obliged to accept the whole of their evidence. You may, if you choose, accept parts of their evidence and reject other parts of their evidence.

You must not let sympathy or emotion sway your judgment. You are expected to use your individual qualities of reasoning, experience, common sense, as well as your understanding of people and human affairs during the course of your deliberations.

A critical part of the criminal justice system is the presumption of innocence. This means that a person who is charged with a criminal offence is presumed to be innocent unless and until the Crown persuades a jury that the person is guilty beyond reasonable doubt.

That burden rests upon the Crown in respect of every element or essential fact that makes up the offences with which the accused has been charged. There is no obligation whatsoever on the accused to prove any fact or issue that is in dispute before you. It is not for the accused to prove his innocence but for the Crown to prove his guilt in relation to each offence and to prove it beyond reasonable doubt. The Crown does not have to prove, however, every single fact in the case beyond reasonable doubt.

At the end of your consideration of the evidence in the trial and the submissions made to you by the parties you must ask yourself: 'Has the Crown proved the guilt of the accused beyond reasonable doubt?' If the answer is "Yes", the appropriate verdict is "Guilty". If the answer is "No", the verdict must be "Not guilty".

Whether your verdicts are "guilty" or "not guilty", they ought to be unanimous.

**ELEMENTS OF EACH COUNT**

In this trial, the Crown must prove each element of each of the two counts against the accused.

**Count 1 – act of indecency**

For count 1, the Crown must prove the following elements beyond reasonable doubt:

9. That at the time and place alleged in the count;
10. The accused committed an act of indecency;
11. That the act was indecent; and
12. At the relevant time, Timothy Lyons was under the age of 16 years.

**Indecent:** the word indecent means contrary to the standards of ordinary and, therefore, respectable people in this community. For an act to be indecent it must have a sexual connotation or overtone. It is for you to determine the standards prevailing in our community. The law also provides that a child under 16 years of age cannot consent to an act of indecency.

**Count 2 – sexual intercourse against a child above the age of 10 years and under the age of 14 years**

For count 2, the Crown must prove the following elements beyond reasonable doubt:

7. That at the time and place alleged in the count;
8. The accused had sexual intercourse with Timothy Lyons; and
9. At the time Timothy Lyons was above the age of 10 years and under the age of 14 years.

**Sexual intercourse:** “sexual intercourse” is defined under our Crimes Act to include “sexual connection occasioned by the penetration, to any extent, of the anus of any person by any part of the body of another person.” The law provides that a person under the age of 16 years does not have the capacity to consent to sexual intercourse.

Finally, I remind you that the failure to prove any element of any count beyond reasonable doubt would mean that the accused is not guilty of that count.

#### SEPARATE CHARGES AND ALTERNATIVES

You must consider each count separately and return a separate verdict of guilty or not guilty on each of the counts. This means that you are entitled to bring in a verdict of guilty on one count and not guilty on the other count if there is a good reason in the evidence for that outcome.

If you accept beyond reasonable doubt that what Timothy Lyons said actually occurred then the case on each count would be proved. But if you have a reasonable doubt concerning the truthfulness or reliability of the evidence of Timothy Lyons in relation to one or other of the counts, that doubt must be taken into account in assessing the truthfulness or reliability of his evidence generally. If you were to find the accused not guilty on one count, particularly if that was because you had doubts about the reliability of Timothy Lyons’ evidence, you would have to consider whether or how that conclusion affected your consideration of the remaining count. While you must consider each count separately, there must be a logical consistency in your verdicts.

#### INSTRUCTIONS ABOUT HOW TO USE THE EVIDENCE

If you find Timothy’s evidence to be truthful, it is sufficient to satisfy the elements of act of indecency that the prosecution has to prove beyond reasonable doubt for Count 1.

Furthermore, if you find Timothy’s evidence to be truthful, it is sufficient to satisfy the elements of sexual intercourse against a child above the age of 10 years and under the age of 14 years that the prosecution has to prove beyond reasonable doubt for Count 2.

Finally, the evidence of the accused should be treated in same way as that of other witnesses.

However, just because the accused testifies does not mean that the onus of proof shifts to the accused. Even if you reject the evidence of the accused, you must still be satisfied that the prosecution has established beyond reasonable doubt that the accused has committed each element of the two charges against him.

#### TENDENCY EVIDENCE

As you are aware, the accused is charged only with the offences stated in the indictment. Generally, juries may only consider the evidence that is directly related to each charge against the accused.

In certain cases the Crown may be allowed to add to the evidence it calls to prove guilt of a particular charge. The law calls this added evidence, “tendency evidence”. Here, the Crown can assert, in proof of any (or all) of the charges, a pattern of behaviour revealing that the accused had a tendency to act in a particular way. Here, the Crown asserts that at the time of the alleged offences, the accused:

1. had a tendency to have a sexual interest in young boys under the age of 12;
2. had a tendency to engage in sexual activities with young boys under the age of 12;
3. had a tendency to use his position of authority as a soccer coach to gain access to young boys under the age of 12 so that he could engage in sexual activity with them.

The Crown asserts that the tendencies of the accused are drawn from the evidence related to all the charges. These include:

1. using his position as soccer coach to befriend the parents of young boys and gain their trust;
2. offering to act as a surrogate father to young boys whose fathers were absent;
3. offering to take young boys on outings;
4. grabbing or touching young boys in the crotch;
5. taking young boys to his house, alone; and
6. getting young boys naked while they were in his home alone.

How can you use this evidence? The Crown relies upon this evidence to prove beyond reasonable doubt that the accused had a sexual interest in each complainant and was willing to act upon it in the way that each complainant alleges. The Crown argues that you will find the accused's sexual interest proved beyond reasonable doubt and therefore you can use it to prove the allegations in the indictment beyond reasonable doubt. First of all, the Crown says that you will be satisfied that the accused had a sexual interest in Simon Rutter on the basis of the acts of a sexual nature committed against Simon Rutter.

The Crown also says that you will be satisfied that the accused had a sexual interest in Justin McCutcheon on the basis of the acts of a sexual nature committed against Justin McCutcheon.

Finally, the Crown says that you will be satisfied that the accused had a sexual interest in Timothy Lyons on the basis of the acts of a sexual nature committed against Timothy Lyons.

Before you can use the evidence of these other acts of a sexual nature in the way the Crown asks you to do so, you must make two findings beyond reasonable doubt. The first is that you must be satisfied beyond reasonable doubt that the sexual act against Simon Rutter occurred. In making that finding, you consider all of Simon's evidence and ask yourself whether you are satisfied that the particular act took place.

If you cannot find that this act described by Simon is proved by the Crown beyond reasonable doubt, then you must put aside any suggestion that the accused had a sexual interest in Simon Rutter, and decide the case on rest of the evidence. If you are satisfied beyond reasonable doubt that this sexual act against Simon occurred, then you go on to consider the second finding. You ask yourself whether, from the act that you have found proved, you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Simon Rutter.

If you cannot draw that inference or conclusion beyond reasonable doubt, you must put aside any suggestion that the accused had a sexual interest in Simon Rutter.

If you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Simon Rutter, you may use that fact in determining whether the accused committed the offences against Justin McCutcheon and Timothy Lyons.

Similarly, if you decide that one or more of the acts *against Justin McCutcheon* is proved beyond reasonable doubt and you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Justin McCutcheon, you may use that fact in determining whether the accused committed the offences against Simon Rutter and Timothy Lyons.

And finally, if you decide that one or more of the acts *against Timothy Lyons* is proved beyond reasonable doubt and you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Timothy Lyons, you may use that fact in determining whether the accused committed the offences against Simon Rutter or Justin McCutcheon.

The evidence must not be used in any other way. It would be completely wrong to reason that, because the accused has committed one offence or is guilty of one piece of misconduct, he is therefore generally a person of bad character and for that reason must have committed all the offences charged. You must not reason in that way.

You cannot use the tendency evidence in any way prejudicial to the accused unless you accept the Crown's argument that it shows that the accused had a sexual interest in, for example, Simon Rutter which therefore makes it more likely that the accused committed the other offences charged against him, that is those involving Justin McCutcheon and Timothy Lyons.

Remember that you are required to find that the elements of each specific charge are proved beyond reasonable doubt before you can find the accused guilty of that charge.

#### DELAY IN COMPLAINT

The delay in making a complaint is a matter that you may take into account in assessing the credibility of the complainant's evidence. In relation to both counts, there was delay of decades between the alleged incidents and the matters being reported to police.

However I am required by law to direct you that a delay in complaint, even a long delay, does not necessarily mean that a complaint is false. There may be good reasons why a person who alleges they have been sexually assaulted may fail to report, to delay in reporting, such an offence.

From your own knowledge of the world, you might think that there could be cases where embarrassment, guilt or worry about the reactions of family or friends might cause a person who alleges sexual abuse to suppress what has taken place.

#### PRACTICAL PROBLEMS FOR THE DEFENCE CAUSED BY LONG DELAY IN REPORTING

It is most important that you appreciate the effects of delay on the ability of the accused to defend himself by testing the prosecution's evidence or bringing forward evidence in his own case, to establish a reasonable doubt about his guilt.

One of the effects is the inability to properly inspect Mr Booth's former residences to determine the layout of Mr Booth's bedroom about which Timothy Lyons gave evidence. There is also the inability to determine the existence of another house or apartment that Mr Booth may have used. These difficulties put the accused at a significant disadvantage in testing the prosecution evidence, or in bringing forward evidence to establish a reasonable doubt about his guilt, or both.

Had the allegations been brought to light and the prosecution commenced much sooner, the complainant's memory for details would have been clearer, such as when the alleged incidents occurred. This may have enabled his evidence to be checked against independent sources so as to verify it, or disprove it. The complainant's inability to recall precise details of the alleged incidents makes it difficult for the accused to throw doubt on the complainant's evidence by pointing to the circumstances which may contradict him.

Another aspect of the accused's disadvantage is that if he had learned of the allegations at a much earlier time he may have been able to find more witnesses or items of evidence that might have either contradicted the complainant or supported his case, or both.

As a result, I warn you that before you convict the accused you must give the prosecution case the most careful scrutiny and bear in mind the matters I have just been speaking about—the fact that the complainant’s evidence has not been tested to the extent that it otherwise might have been and the diminished ability of the accused to bring forward evidence to challenge it, or to support his defence.

However, I am not telling you that these problems for the accused make it impossible for the prosecution to prove its case. If, after carefully considering my warnings and scrutinising the complainant’s evidence with great care (in the context of all the other evidence) you are well satisfied of the truth and accuracy of the complainant’s evidence and you are satisfied beyond reasonable doubt that any of the alleged offences did occur, then it is your duty to return a verdict of guilty in relation to that matter.

With a final reminder that the verdicts you reach must be unanimous, I ask you to retire to the jury room to consider your verdicts.



## Joint trial with three complainants (weak, strong & medium evidence)

written by Annie Cossins<sup>4</sup>

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<sup>4</sup> With feedback from Jane Goodman-Delahunty, Judge Dina Yehia, a senior barrister, Vanessa Viaggio and Leigh Sanderson and research assistance by Natalie Hodgson.

**Court Officer:** All rise.

*Everyone stands. Judge enters the court room and is seated.*

**Court Officer:** Please be seated.

*Everyone sits.*

### **Judge's initial remarks to the jury**

**Judge:** Good morning, ladies and gentlemen of the jury. Serving on a jury will be a completely new experience for some, if not all of you. It is, therefore, necessary for me to explain a number of matters to you.

The accused, Mr Mark Booth, seated before you, has been charged with six counts of sexual assault. These are: 1 count of act of indecency against a person under the age of 16 years, namely Simon Rutter; two counts of act of indecency towards a person under the age of 16 years, namely Justin McCutcheon; one count of sexual intercourse against a child above the age of 10 years and under the age of 14 years, namely Justin McCutcheon; one count of act of indecency towards a person under the age of 16 years, namely Timothy Lyons and one count of sexual intercourse against a child above the age of 10 years and under the age of 14 years, namely Timothy Lyons.

Mr Booth has pleaded 'not guilty' to each of these charges.

You will be asked to decide whether Mr Booth, the accused, is guilty or not guilty on each of the different charges against him.

Please listen carefully to each of the witnesses as they give their evidence from the witness box. You should assess how each witness presents their evidence and how they respond to questions. This will assist you in deciding whether to accept all or only part of their evidence.

Each of you is now the judge of the facts. You may be wondering what my role is since I am also a judge. I am the judge of the law and I decide how the law is to be applied during the trial.

At the end of the trial, I will give you directions about the law that is relevant to this case. I will also explain how the law should be applied by you to the questions you have to decide.

I will now introduce the lawyers who appear in this case. The barrister on the right of the bar table is the Crown Prosecutor. She represents the State on behalf of the community and is referred to as Ms Crown.

The barrister sitting on the left of the bar table is Mr Pearce. He appears for the accused, Mr Booth, as his defence counsel.

The Crown bears the responsibility to place sufficient evidence before you, the jury, to prove its case against the accused beyond reasonable doubt. Ms Crown will present the Crown's case first. Then Mr Pearce will present any evidence that the accused wishes to place before the court in his defence.

There is a very important difference between the role of the Crown and that of the defence. You will have heard of the rule that the accused is innocent until proven guilty. This means that the prosecution must prove the elements of each offence beyond reasonable doubt. However, the accused has no obligation, whatsoever, to prove anything. The defence does not have to call any witnesses, or offer any evidence. The burden of proof is entirely on the prosecution.

Your role is to not to try and determine where the truth lies. Your role is simply to decide whether the Crown has produced sufficient evidence for you to be satisfied, beyond reasonable doubt, that the accused is guilty of each of the counts of sexual assault against him.

Shortly the Crown Prosecutor will give an overview of the case that the Crown seeks to establish by the evidence it will present. The prosecution's opening address is intended to assist you in understanding the evidence as it unfolds. However, what Ms Crown will say to you is not evidence. It is no more than a summary of the Crown's case against the accused. You may address the jury, Ms Crown.

*Ms Crown stands.*

### **Prosecution's Opening Address**

**Ms Crown:** Thank you, your Honour. Good morning Ladies and Gentlemen. I act on behalf of the Director of Public Prosecutions. My role, as the prosecutor in this matter, is to present evidence against the accused, Mr Booth. My purpose in speaking to you is to outline what the Crown intends to prove in this case.

You will hear how each of the three complainants in this case were young boys befriended by the accused when he was the coach of the under-12 boys Kogarah soccer team during the 1990s. The Crown will prove that Mr Booth was a serial offender who groomed young boys and befriended their families in order to create opportunities to satisfy his sexual desires.

The testimony of the Crown's first witness will show that Mr Booth committed an act of indecency against Mr Simon Rutter between 1 March 1993 and 1 September 1993 when Simon was 11 years old and a member of the Kogarah under-12 boys soccer team. Simon Rutter will give evidence that he frequently visited the accused's home in GyMEA Bay while Simon waited for his mother to pick him up after she finished work.

The facts will show that the events the act of indecency the subject of Count 1 occurred in the bathroom of the accused's home. Simon Rutter will give evidence that he was pushed into a swimming pool by the accused. After a shower, the accused offered to dry Simon with a towel which progressed to the accused stroking Simon's penis as the accused pressed his body against him.

In relation to counts 2 and 3, the Crown will prove that Mr Booth committed acts of indecency against Justin McCutcheon, between 1 September 1995 and 31 October 1995. Justin McCutcheon will give evidence that he was 10 years of age at the time and a member of the under-12 boys Kogarah soccer team. He will testify that he and Mr Booth spent time together on the weekends after Justin's father and Mr Booth became friends.

When Justin's father travelled for work, Justin sometimes went to the movies and to Caringbah swimming pool with Mr Booth. After a late night at the movies, Justin stayed overnight in Mr Booth's apartment. Justin's testimony will reveal how Mr Booth insisted on removing all of Justin's clothing and sharing his bed with Justin. He then touched Justin's genitals, forced Justin to touch the accused's penis, then masturbated Justin and himself at the same time. This incident is the subject of Counts 2 and 3.

Justin will also give evidence that, about a week later, when Mr Booth was driving Justin home from the swimming pool, he turned into a park, reached over, took Justin's hand and placed it on Mr Booth's penis then drew Justin's head down into his lap where he forced his penis into Justin's mouth. This incident is the subject of Count 4.

Finally, the Crown will prove that Mr Booth committed an act of indecency against Mr Timothy Lyons between 1 August 1997 and 30 August 1997 when Timothy was 11 years of age and a member of the Kogarah under-12 boys soccer team. Timothy Lyons will give evidence that he became one of a few special boys whom the accused took to McDonald's after soccer training on Saturday mornings. He will describe how Mr Booth was affectionate with all the boys. Mr Booth usually drove Timothy home and sometimes stayed to have a cup of tea with Timothy's mother on the back porch.

Between 1 and 31 December 1997, Mr Booth offered to look after Timothy for the three days his mother was in hospital for an operation. Because Mr Booth did not have a spare bed, Timothy slept in Mr Booth's double

bed. Mr Booth committed an act of indecency towards Timothy when Mr Booth stroked Timothy's penis and placed Timothy's hand on Mr Booth's penis. This incident is the subject of Count 5.

The Crown will also prove that Mr Booth had sexual intercourse with Timothy Lyons on the same day when he pushed Timothy onto his stomach then inserted a finger into Timothy's anus. This incident is the subject of Count 6.

The detailed evidence given by Simon Rutter, Justin McCutcheon and Timothy Lyons, who in the 1990s were all vulnerable boys under the age of 12 years, will prove beyond reasonable doubt that Mr Booth had the opportunity to commit the offences against these three boys while he was alone with them and that he is guilty of each count of sexual assault against him.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. I will now ask Mr Pearce to address you on the matters raised in Ms Crown's opening address and any other matters to be raised by the accused. This opening is intended to assist you in understanding the issues in the trial and what the accused might say in answer to the Crown's allegations. But I need to remind you that, like Ms Crown's opening address, what Mr Pearce will say to you is not evidence. Mr Pearce.

*Mr Pearce stands.*

### **Defence's Opening Address**

**Mr Pearce:** Thank you, your Honour. Good morning Ladies and Gentlemen of the Jury, my name is Mr Pearce and I represent the accused in this trial. I would like to tell you something about the case you are about to hear.

There is no dispute that my client was the coach for the under-12 boys soccer team in Kogarah during the 1990s. There is also no dispute that my client knew Simon Rutter, Justin McCutcheon and Timothy Lyons. However, my client denies all the allegations against him. The allegation made by Simon Rutter is a figment of his imagination, made up for financial gain. On a few occasions, my client looked after Simon at his home in Gynea Bay. This assisted Simon's mother who worked Saturdays. My client's good deeds all those years ago have been turned against him. You will see that Simon had been abandoned by his father and was a troubled lad, who didn't like being told what to do. Today, Simon is still a troubled person whose allegations were made just before he applied for victim's compensation.

My client also assisted the parents of Justin McCutcheon whose father travelled frequently for work. During the time that Justin was in the soccer team, Mr Booth and Justin's father became good friends. As a favour to Justin's father, my client occasionally took Justin to the movies or to the local swimming pool. Justin became jealous of Mr Booth's friendship with his father especially because he himself saw so little of his father. Justin was suspended from school due to his habit of forging his father's signature in order to explain his absences from school. For reasons known only to Justin, he has concocted a story of sexual abuse, allegations that my client completely denies.

My client, Mr Booth, was also on friendly terms with the mother of Mr Timothy Lyons. In fact, they were lovers for a short period, something that Timothy Lyons disapproved of. I will show you how he was clearly jealous of Mr Booth and wanted his mother's relationship with Mr Booth to come to an end.

I will also highlight the many inconsistencies in the evidence of Simon Rutter, Justin McCutcheon and Timothy Lyons. Not only did they not come forward for more than two decades, they have changed their minds, more than once, about the dates on which the incidents are said to have occurred or changed their minds about other events. When Mr Booth gives evidence, you will hear about my client's care and concern

for these boys and their families. His testimony will show you that the three complainants have fabricated the events said to constitute the assaults and that they intended to make trouble for my client.

After hearing all the evidence, you will find that reasonable doubt does exist on each and every count and that my client is not guilty of the six counts against him.

*Mr Pearce sits.*

**Judge:** Ms Crown, you may call your first witness to the witness box.

*Ms Crown stands.*

**Ms Crown:** Thank you your Honour. I call Simon Rutter to the witness box.

*Simon enters the witness-box and sits.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Simon repeats the oath.*

**Examination-in-Chief of Simon Rutter**

Prosecution: Please tell the court your full name, age and date of birth.

Simon: Simon Marshall Rutter. I'm 33 and I was born on 24 February 1982.

Prosecution: And what is your occupation and place of work?

Simon: I work in a bar in the city, at the Clock Hotel. I'm a casual barman on weekends.

P: Can you tell the court how you came to join the under-12 boys' soccer team in Kogarah?

Simon: Yeah ... I think I joined in June 1993. My mum wanted me to play ... you know ... to have something to do on Saturdays when she worked.

P: And when did you first meet the accused, Mr Booth?

Simon: Oh, the first day. He gave me some shorts and a t-shirt to try on. And the shorts were really tight ... I remember he grabbed me, um, in the crotch to see how tight they were.

P: What happened then?

Simon: Nothing, I just remember him grabbing me but I didn't think anything of it, you know, it was in front of some other boys who also joined that day.

P: What happened when soccer practise was finished for the day?

Simon: I used to wait for Mum ... but sometimes she was late. He saw me, Mark, I mean Mr Booth, he saw me waiting one day and said I could wait at his house in Gynea Bay, and he'd give me some lunch. I was starving so I agreed.

P: But how did your mother know where you were?

Simon: Oh, he phoned her at the shop where she worked. And then she picked me up a little while later.

P So is that what generally happened on Saturdays?

Simon: Yeah, Mark would take me back to his place for lunch and, you know, he was kind, and funny, and I felt special, you know, being looked after by the coach. So we'd have lunch and wait for Mum. Then one day he said we should have a shower together.

P Can you remember when that occurred?

Simon Um ... yeah it was the end of July.

P You said previously it was in March, is that correct?

Simon: Yeah, I did. It was so long ago but I'm sure it was July now that I think about it.

P Can you tell the court what happened next?

Simon Nothing much, Mark helped me dry myself, although it felt a bit creepy.

P Creepy?

Simon Yeah ... he just took a long time to dry me but I wouldn't let him dry my genitals.

P Was this the only time you had a shower at his place?

Simon He used to suggest having a shower each time I went to his place but I refused.

P And why was that?

Simon I don't know really, it just seemed a strange thing to be doing, having showers with the coach.

P So did you ever have another shower with him?

Simon Yeah, just one more time.

P And when was that?

Simon Around the middle of August. I remember there was ... um ... a huge thunderstorm after soccer practice. And Mark said, 'Well, you can't wait out in the rain for your Mum. You'd best come back to my place for lunch.'

P So what happened when you arrived at Mr Booth's house?

Simon We had lunch as usual although I ate half his sandwich because I was starving. He was a bit pissed off about that. Then I helped him clean out his pool after the rain stopped ... he started fooling around ... teasing me and stuff. Then he pushed me into the pool, saying that'll teach me for eating his lunch.

P With your clothes on?

Simon Yeah, it was freezing, in the middle of winter.

P What did you do?

Simon I swam to the end of the pool and climbed out. And because I was wet and shivering, Mark said, 'Look you'll have to have a shower'. I said I would but he had to stay outside.

P And what happened after that?

Simon He snuck into the bathroom when I was drying myself and reminded me that I had no dry clothes to wear. I was standing there naked with the towel and he said, 'I'll give you some dry clothes if you give me the towel'. So he finished drying me, put a t-shirt over my head and reached over my shoulder, and grabbed my penis.

P What did you do?

Simon I froze. I didn't know what to do. He said, 'Don't worry, it's just a bit of fun, it's what boys do together'.

P Then what happened?

Simon He started stroking my penis and was pressing his body against me, I could feel, you know, his ... um ... erect penis against my body.

P What did you do?

Simon I just stood there frozen. And then he started touching my bottom and I freaked and ran out the bathroom and out the front door.

P Did he follow?

Simon Yeah, he was calling out and stuff but Mum's car pulled into the driveway and I ran over and got in, and we drove off.

P Did you tell your mother what happened?

Simon Just that he'd pushed me into a freezing pool and I didn't want to go to his house again. Mum was upset as well cos I was only dressed in a t-shirt, with no shorts or undies or a jumper. She said she'd organise someone else to look after me on Saturdays.

P Why didn't you tell your mother the whole story?

Simon Because he said at the time, it was just a game ... and Mum was so happy there was someone to look after me, you see. I didn't want to upset her. Plus she was such a trusting person. She wouldn't have coped ... especially after my Dad left. It was easier if I didn't say anything. So I just kept my distance from Mr Booth.

P And one further question, do you know either of the other two complainants in this trial, Mr Justin McCutcheon or Mr Timothy Lyons?

Simon No, I don't.

Prosecution: Thank you, Mr Rutter. I have no further questions, your Honour.

*Ms Crown sits.*

**Judge:** Thank-you, Ms Crown. Mr Pearce, do you wish to cross-examine the witness?

*Mr Pearce stands.*

**Defence:** Yes, thank you, your Honour.

### **Cross-examination of Simon Rutter**

Defence: You told the court that the first occasion when you had a shower with Mr Booth was the end of July, 1993, is that correct?

Simon Yeah, that's right.

D But you said previously it was in March.

Simon Yeah.

Defence Can you explain this change of heart, if I can put it like that?

Simon It's not a change of heart ... it's just very hard to remember dates from 20 years ago. I think I was confused about when the soccer season started.

D And so how can you be so sure it was July when you joined the team?

Simon Because I now remember that when we played it was always cold. And sometimes rainy.

D So you were confused?

Simon Yes.

D I see. And how confused are you about the events you described?

Simon I'm not confused at all.

D Well, let's go over some of the details. You said that on the day you joined the team, Mr Booth apparently grabbed your crotch to see how tight your shorts were?

Simon That's right.

D So in broad daylight with other boys around, and adults in the vicinity, Mr Booth grabbed your crotch?

Simon That's what he did ... he did it with other boys too ... if they complained their shorts were tight.

D So you're alleging that Mr Booth regularly grabbed boys in the crotch in full view of other people?

Simon [defensive] I'm telling you, that's what he did.

D You also told the court that Mr Booth pushed you into his pool in the middle of August after a huge thunderstorm, is that correct?

Simon Yes.

D But in the middle of August 1993, there was virtually no rain, in fact, weather records show that August was completely dry from the 11<sup>th</sup> to the 25<sup>th</sup> of August. That is, 15 days in a row without rain. What do you say to that?

Simon But I remember a thunderstorm.



D And are you also aware that Mr Booth didn't own a house with a pool in July 1993?

Simon Um ... but that's what I remember. The last time I went to his house was the day he pushed me into the pool.

D In fact, Mr Booth didn't own a house with a pool until 1997. That is, four years later.

Simon Well, it must've been another pool, maybe next door or something.

D But none of the houses in Mr Booth's street had a pool in 1993. So everything you've said today about being pushed into a swimming pool is a pack of lies.

Simon No, it's not!

D You were a bit of handful, weren't you? After your father left your mother?

Simon: I don't know what you mean.

D You were uncontrollable, weren't you? Wagging school, lying to your mother, sometimes lying to Mr Booth about missing soccer training.

Simon That's rubbish.

D There's no need to get upset, Mr Rutter. I'm merely trying to establish what really happened. [pause] So, tell me, you're not in full-time employment?

Simon No.

D Is there a reason?

*Ms Crown stands.*

Prosecution Your Honour I object ... I can't see the relevance of that question.

Judge Mr Pearce?

*Ms Crown sits.*

D The reasons will soon become apparent, Your Honour, if you will allow me to proceed.

Judge Very well, Mr Pearce, you may continue.

D Mr Rutter ... you just told the court that you're not employed full-time. Is there a reason?

Simon Just that I can't get a full-time job.

D And have you tried?

Simon Yeah, of course.

D And how long have you been out of full-time work?

Simon I don't know, it varies ... sometimes I get full-time work for a few weeks, then I'm back to weekends and then I'll fill in for someone else when they're away ... that kind of thing.

D And how many years has this been going on?

Simon Five or so.

D Is it because you're difficult to work with?

Simon *No.*

D So your income has been unstable for a number of years?

Simon Kind of, I mean I earn enough with penalty rates to get by.

D I see ... to get by. But you have expenses, don't you? Rent? Car? Bills? Food?

Simon Yeah, like everyone else.

D Surely you must run short of money at times?

Simon No, I get by.

D But more money would come in handy, wouldn't it?

Simon Yeah, if I was earning as much as you are, asking me these questions.

D Indeed ... one way would be a victim's compensation claim, would it not?

Simon Not for that reason.

D Well, what reason? If not to improve your income ... isn't that the reason why you've made all these allegations against Mr Booth?

Simon No, I—

D Because by making up these allegations you can then claim \$15,000.

Simon That's not the reason.

D I can understand Mr Rutter, you're casually employed, not sure if you can pay all your bills from week to week—

Simon Not true—

D And then someone suggests to you that if you make up allegations against your old soccer coach, you can put in a victim's compensation claim.

Simon No, that's not the case.

D I have no further questions, Your Honour.

*Mr Pearce sits.*

**Judge** Would you like to re-examine your witness, Ms Crown?

*Ms Crown stands.*

## **Re-examination of Simon Rutter**

**Prosecution** Yes, thank you, your Honour.

**P** Simon, I know these events took place a long time ago but can you remember whether Mr Booth had a pool back in July 1993?

**Simon** What I remember clearly is the storm and when it stopped, Mr Booth taking a key off a hook in his kitchen and saying, 'Come on, we'll go clean the pool'. He unlocked a gate outside and we went into a courtyard where there was a pool. I had no reason to think it wasn't his. He said nothing about a neighbour.

**P** And how sure are you that he pushed you into the pool?

**Simon** Absolutely sure. The last thing I wanted to do was go swimming in the freezing cold.

**P** And one other matter, Simon, when did you first go to the police with your allegations?

**Simon** Two years ago.

**P** What was the reason?

**Simon** I saw him ... Mr Booth, in the city one night and it just brought it all back, all those years ago and I just realised, my God, he's gotten away with it.

**P** Was it also because you could then apply for victim's compensation?

**Simon** No, of course not.

**P** Thank you, Simon. I have no further questions, Your Honour.

**Judge:** You may step down from the witness-box, Mr Rutter.

*Simon exits the witness box. Ms Crown stands.*

**Prosecution:** I call my next witness, your Honour, Mr Justin McCutcheon.

*Mr McCutcheon enters the witness box and takes the oath.*

**Judges' Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr McCutcheon repeats the oath.*

## **Examination-in-chief of Justin McCutcheon**

**Prosecution:** Please tell the court your full name, date of birth, and age.

**Justin:** My name is Justin Paul McCutcheon and I'm 30. I was born on 3 March 1985.

**Prosecution:** And what's your occupation and place of work?

**Justin:** I'm a sales manager at Custom Built Kitchens in Manly.

P: Mr McCutcheon, I'd like to take you back to the time when you joined the under-12 boys' soccer team in Kogarah. Do you remember the year you joined?

Justin: It was sometime in 1995.

P: And how old were then?

Justin: I was 10 when I joined up.

P: Is this when you met Mr Mark Booth?

Justin: Yeah, he was the coach and my Dad sort of knew him, but not very well.

P: So your father and Mr Booth weren't close friends at the time?

Justin: Not at first but they became friends. I mean they always talked after soccer training and then Dad started asking him over to our house, you know, for a drink or a barbecue ... that kind of thing.

P: Was that the only contact you had with Mr Booth outside of soccer training?

Justin: No ... later on that year I sometimes went to the movies with him and we went to the local swimming pool a bit because he was teaching me to swim. My Dad travelled a lot for work, so Mark offered to take me out when Dad was away.

P: And how did you feel about that?

Justin: Oh, it was great, like I had two fathers, you know, I just loved it. I had someone to go out with cos Mum was always busy with my younger sisters.

P: Were there other times you spent with Mr Booth?

Justin: Yeah, I stayed at his apartment one time after a late night movie. Mum said that I could sleep at his place.

P: And when was that?

Justin: Oh, it would've been later in the year ... um, September I think, yeah, sometime in September, maybe October, because we were, like, near the end of the soccer season.

P: Can you tell the court what happened that night?

Justin: Yeah, Mark didn't have a spare bed so I had to share his bed. I remember when I was undressing he told me I had to take all my clothes off ... like my singlet and underpants as well because that's what men did.

P: And did you?

Justin: Yeah.

P: And what happened then?

Justin: Well, he was always playing jokes and horsing around, tickling and stuff. I pushed him away but then he started playing a game with my privates, saying things like, 'What's this down here?' And I just thought he was being funny, you know, and then he started, like, rubbing my

penis while he got me, I mean, he, um, grabbed my hand and put it on his penis and showed me how to rub it.

P And did you masturbate his penis?

Justin Kind of but only with his hand on top of mine. I didn't want to. I felt sick ... I didn't know what he wanted me to do. He said I wasn't doing it properly, he got a bit annoyed so he took over, and did it himself.

P And during this time, did he also continue to masturbate you?

Justin Yeah.

P And how long did this go on for?

Justin Oh, God it's hard to say. 30 minutes, an hour ... like it's really hard to remember. I was just so shocked. It seemed to go on and on forever.

P Did you try to stop him?

Justin I couldn't. He was holding my penis. Whenever I moved, he gripped it harder and I thought Christ, if I try to pull away he'll rip it off.

P What happened after that?

Justin I pretended to sleep. I didn't say anything and he didn't either.

P Did you tell your parents?

Justin No way! He was like my Dad's best friend, you know, they'd become really good mates. And my Dad ... like, there's no way he would've believed me.

P Did you see Mr Booth after this incident?

Justin Yeah, about a week later. He took me to the Caringbah swimming pool and, um, on the way home he stopped his car in a park.

P What happened in the park?

Justin He ... um ... he asked me how I was feeling after our ... um ... 'fun time in bed together'.

P What did you say?

Justin Nothing, I just, like, shrugged my shoulders. I couldn't look at him.

P What happened then?

Justin He took my hand, unzipped his trousers and put my hand on his penis.

P What did you do?

Justin [sighs] Um, he tried to get me, you know, to rub it but I didn't want to. So he put his hand behind my head and pulled my head down to his crotch.

P And then what happened?

Justin [starts to cry] He forced his penis into my mouth and I was choking and—

P It's alright, Justin. Would you like to take a break?

Justin No, no, I'm fine. [Justin composes himself, wipes his eyes.] I choked on it, you see, and I cried so he let me go.

P What happened then?

Justin He just said, 'Remember this is our secret, Justin. I could get into big trouble if you tell anyone. And so could your Mum and Dad'. So I promised I'd never say a thing.

P And one final question, do you know either of the other two complainants in this trial, Mr Simon Rutter or Mr Timothy Lyons?

Simon No, I don't.

Prosecution: Thank you, Mr McCutcheon, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mr McCutcheon?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

### **Cross-examination of Justin McCutcheon**

Defence: In your evidence today, Mr McCutcheon, you said that Mr Booth was masturbating your penis for about an hour?

Justin Yeah, maybe half an hour, an hour, it's hard to say.

D So you're saying that he's got hold of your penis and his own and masturbating both for about an hour, is that right?

Justin Well, I said it was hard to say how long exactly.

D Alright. So you've got the accused, Mr Booth, with an erection for an hour, maybe longer?

Justin Yeah, maybe.

D And during this time you just lay there, for an hour, maybe longer, we don't know exactly, you just lay there and did nothing?

Justin I couldn't ... I froze ... I was scared, I didn't know what to do to be honest.

D And did you have an erection?

Justin Not at first ... but yeah, eventually.

D You were frozen, scared but you managed to have an erection, is that correct?

Justin           There were so many emotions—

D                So many emotions that none of them enabled you to say, ‘Stop!’, and leap out of the bed?

Justin           I wanted to but I couldn’t.

D                So many emotions that you couldn’t tell either of your parents what happened?

Justin           No.

D                Even after the incident in the park, despite that, you said nothing?

Justin           No.

D                And yet you told the court that in broad daylight, in public, and out of the blue, Mr Booth forced his penis into your mouth.

Justin           That’s what happened.

D                Yet you said nothing and apparently have harboured this secret for, what, 20 years?

Justin           Not exactly ... I told my best friend at school at the time.

D                And what came of that?

Justin           Nothing, I didn’t want him to tell anyone.

D                But isn’t it the case that you continued to go swimming with Mr Booth?

Justin           I couldn’t get out of it.

D                But you were happy to get into his car?

Justin           Only once, I think ... I caught the bus generally which he didn’t like.

D                But surely your parents must’ve wondered why you were catching a bus?

Justin           Yeah, but I made up some story.

D                So you’re good at making up stories, are you?

Justin           This is not a story.

D                And what about the stories you made up at school?

Justin           I don’t know what you mean.

D                Your school records show that you were suspended from school on two occasions.

Justin           What’s that got to do with anything?

D                For making up stories, wasn’t it?

Justin           But it was after what Mark did to me—

D You were suspended for writing letters apparently signed by your parents, isn't that the case?

Justin Yes.

D And who signed the letters?

Justin I did.

D So you forged your parents' signatures?

Justin Yes.

D And just like you did back then, in your carefully crafted and forged letters, everything you've said today is a pack of lies, isn't it?

Justin I am not lying!

D You resented Mr Booth's friendship with your father, isn't that the case?

Justin No.

D They didn't include you when they were together, did they?

Justin Sometimes, they did ... I mean they just talked about sport and watched TV.

D But only sometimes so you felt left out when they were together, didn't you?

Justin I don't know. Maybe. But you know, I was a kid, I was just happy just being around them.

D Thank you, your Honour. I have no further questions for this witness.

*Mr Pearce sits.*

**Judge:** You may step down from the witness-box, Mr McCutcheon.

*Justin exits the witness box. Ms Crown stands.*

**Prosecution:** I call my next witness, your Honour, Mrs Jennifer McCutcheon.

*Mrs McCutcheon enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mrs McCutcheon repeats the oath.*

**Examination-in-chief of Mrs McCutcheon**

Prosecution: Please tell the court your full name, date of birth, and age.

Jennifer: My name is Jennifer Pauline McCutcheon. My birthday is 24 April 1959. I'm 56.

Prosecution: And what is your occupation and place of work?

Jennifer: I'm a nurse at Royal North Shore Hospital.



P: How well did you know the accused, Mr Booth?

Jennifer: Well, at first he was just the coach for Justin's soccer team. But over time he became a friend of my husband's, I guess because they loved talking football together. So there were lots of times when Mr Booth came over for a meal and then watched the footy.

P: And what about when your husband travelled for work?

Jennifer: Yes, he became a sort of surrogate father for Justin, I suppose. Which was a great help for me because I had two other children and Justin really missed his Dad, you know, going off and doing boys stuff with his Dad. So Mr Booth stepped in to help.

P: With your permission?

Jennifer: Oh yes, both my husband and I were really grateful, I have to say. He was our saviour or so we thought.

P: Do you remember a time when Justin stayed overnight at Mr Booth's apartment?

Jennifer: Yes, I do.

P: And what is so memorable about that?

Jennifer: Well, when Justin came home, after Mr Booth dropped him off, he was abnormally quiet and just went straight to his room. Usually he'd come and talk about what movie he'd seen, stuff like that, but not this time.

P: So what did you do?

Jennifer: I went to his room to find out what was wrong. But he wouldn't talk. I asked him if something had happened with Mr Booth but he just told me to go away. Although it was pretty clear that something *had* happened—

P: And did you pursue the issue?

Jennifer: I talked to my husband about it but he just dismissed it, I think because Mr Booth was his friend, and Justin was becoming a teenager, you know, moody, a bit unpredictable. And then the arguments started. Justin totally changed. He said he didn't want to go out with Mr Booth any more. My husband got angry and insisted that Justin go swimming with him. So Justin turned that on his head, and said he would catch the bus to the swimming pool since he didn't want Mr Booth picking him up any more. And of course, that led to more arguments. But it seemed to me that Justin was protecting himself from something, although every time I asked he wouldn't say a thing.

P: When did you find out that Justin had been writing letters in your name and staying away from school?

Jennifer: It was around the same time. He'd been really good at school and then we found out he'd been wagging and lying about it all. None of it made sense except that I knew he didn't want to be around Mr Booth.

P: And when did you find out about the allegations against Mr Booth?

Jennifer Well, I didn't know the full story until recently, until Justin went to the police last year. But one of Justin's school friends, at the time, told me that something bad had happened but that's all he would say.

P What did you do?

Jennifer: I said to Justin, 'Look I know Mr Booth has done something ... I don't know what ... but I'll meet you at the swimming pool when I can, to bring you home'. So that's what I did. And my husband never knew. But the whole thing put enormous pressure on me because I had to pretend that everything was alright, but behind my husband's back I was doing what I could to protect my son.

Prosecution: Thank you, Mrs McCutcheon, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mrs McCutcheon?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

#### **Cross-examination of Mrs McCutcheon**

Defence: Mrs McCutcheon, you've just told this court that you had serious suspicions about Mr Booth's behaviour towards your son because of an apparent change in your son's behaviour?

Jennifer: Yes.

D: Yet you continued to let Mr Booth take your son on outings?

Jennifer: Yes, but very limited outings.

D: But didn't you worry?

Jennifer: Of course I did. But at the swimming pool I knew other people would be around.

D: Wouldn't a mother who had real fears for her son's safety do more?

Jennifer: I did what I could.

D: You didn't confront Mr Booth, did you?

Jennifer: No.

D: If you cared about your son, why didn't you confront Mr Booth?

Jennifer: God knows I wish I had, I should've, I know that now—

D: You say you were a concerned mother, but you did nothing to deal with the problem directly.

Jennifer I did what I could behind my husband's back.

D You never saw Mr Booth do anything suspicious, did you?

Jennifer: No.

D Back in 1995, Justin never complained about Mr Booth, did he?

Jennifer Not directly but he refused to get into his car, he didn't want to go swimming with him, his behaviour totally changed—

D But didn't you consider that the change in his behaviour could've been due to other things? Like not having a father around?

Jennifer No.

D And in the 20 years since 1995, Justin never complained to you about Mr Booth, did he?

Jennifer: No.

D Are you sure you're not exaggerating things to help your son out now?

Jennifer Absolutely not.

D You're not covering up the dysfunction in your family because of an absent father?

Jennifer My family was not dysfunctional.

D Thank you, your Honour. I have no further questions.

*Mr Pearce sits.*

**Judge:** You may step down from the witness-box, Mrs McCutcheon.

*Mrs McCutcheon exits the witness box. Ms Crown stands.*

**Prosecution:** I call my next witness, your Honour, Mr Aaron Sorkin.

*Mr Sorkin enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Sorkin repeats the oath.*

**Examination-in-chief of Mr Sorkin**

Prosecution Please tell the court your full name, date of birth, and age.

Aaron: Aaron Miles Sorkin. I was born on 30 January 1985. I'm 30 years old.

Prosecution: And what is your occupation and place of work?

Aaron: I'm a plumber, self-employed.

P: And how do you know Justin McCutcheon?

Aaron: We were at school together, primary then high school.

P And were you good friends?

Aaron: You bet, Justin was my best friend.

P I'd like to take you back to the time when you were in primary school together in September 1995. Do you remember anything particular about that time?

Aaron Yeah, I remember Justin changed a lot. He went real quiet, kind of moody, really grumpy and touchy. It was hard to figure out.

P Did you ask him what was wrong?

Aaron: Yeah, he said it was something to do with his soccer coach.

P Did he say what exactly?

Aaron: Not at first. He started to cry, and then he told me his coach had ... um ... done things ... sexual things to his willy.

P Did he give details?

Aaron: No and I didn't ask. I didn't know what he meant really. I knew it was bad though.

Prosecution: Thank you, Mr Sorkin, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mr Sorkin?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

### **Cross-examination of Mr Sorkin**

Defence: Those words, "sexual things," are very vague, aren't they, Mr Sorkin?

Aaron Yeah, I know but that's what Justin said.

D It could mean anything or nothing, don't you agree?

Aaron No, it definitely meant something bad, I knew that.

D Are you sure you're not gilding the lily here, to help your best friend?

Aaron No way. Why would I do that?

D Or misinterpreted what he said?

Aaron No.

D Why didn't you ask for more details?

Aaron I was embarrassed. I just didn't know what to say.

D Thank you, your Honour. I have no further questions for this witness.

*Mr Pearce sits.*

**Judge:** You may step down from the witness-box, Mr Sorkin.

*Mr Sorkin exits the witness box. Ms Crown stands.*

**Prosecution:** I call my next witness, your Honour, Mr Timothy Lyons.

*Mr Lyons enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Lyons repeats the oath.*

### **Examination-in-chief of Timothy Lyons**

Prosecution: Please tell the court your full name, date of birth, and age.

Timothy: My name is Timothy Dyson Lyons and I'm 29. I was born on 21 September 1986.

Prosecution: And what is your occupation and place of work?

Timothy: I'm a director of finance for Sydney Bank.

P: Can you tell the court when you joined the under-12 boys soccer team in Kogarah?

Timothy: It was just after my birthday in May 1997.

P: Was Mr Booth the coach of the team at the time?

Timothy: Yes.

P: How well did you know Mr Booth?

Timothy: Pretty well, I guess. I was one of the boys he took to McDonald's after training on Saturday mornings.

P: Were you a special group of boys or did he take anyone to McDonald's?

Timothy: No, he seemed to have his favourites, I think.

P: And how did Mr Booth behave with you and the other boys he took to McDonald's?

Timothy: Oh, he was just like one of us. Except he was the biggest, the loudest, the funniest. He was great fun. He used to pay for our lunch and muck around, you know, lots of jokes.

P: How did he treat you?

Timothy: Fine at first. He was friendly and very touchy, feely, I remember that. Ruffling our hair or arm around our shoulders, that kind of thing. I loved it because my Dad didn't live with me and Mum.

P How did you get home after McDonald's?

Timothy: Well, Mum said I could only go if someone drove me home. So Mark offered to do that.

P How well did your mother know Mr Booth?

Timothy: She met him when he drove me home. Sometimes he stayed for a cup of tea.

P On those occasions, were you ever alone with Mr Booth?

Timothy: Yeah, when my mother was in the kitchen.

P Did anything ever happen when you were alone with him?

Timothy: Once when we were on the back porch. He was teasing me, he put a piece of ice down my shorts and said that my mother was pretty sexy and pointed to his crotch.

P What did you do?

Timothy I just giggled, I was really embarrassed.

P Then what happened?

Timothy He said that will happen to me when I start looking at girls. And I said, I already did and pointed to the girl over the back fence, my next door neighbour. He laughed and said I was too young for that. Then he pointed to my shorts and asked me what I had 'down there'.

P Can you remember when this occurred?

Timothy It was sometime in August I think. Just before or maybe after my Mum's birthday.

P What did you say?

Timothy: Nothing because Mum called out to us.

P Were you ever alone with Mr Booth after that?

Timothy: Yeah because he offered to look after me for three days when Mum had to go to hospital for an operation. It was in December, before Christmas.

P And did you stay at Mr Booth's place?

Timothy Yes.

P What happened when you arrived there?

Timothy He ordered a pizza and we watched a movie.

P On the TV?

Timothy Yeah, it was a video.

P Can you remember the name?

Timothy Ah ... yeah ... it was the second *Babe* film, *Pig in the City*.

P Are you sure about that?

Timothy Yes.

P And where did you sleep that night?

Timothy Well, I had to sleep in Mark's bed, he said.

P Did anything happen?

Timothy Yeah ... he started stroking my arms which I thought was a bit weird. But he said it would help me sleep because I was worried about my mother. Then he stroked my leg and after a while he ... ah ... he rubbed my penis on the outside of my underpants.

P Did anything else happen?

Timothy He took my hand and put it on his penis.

P What did you do?

Timothy I pulled my hand away, immediately.

P And what did Mr Booth do?

Timothy He just said I needed to calm down. So he pulled off my underpants and ... um ... rubbed my penis with some oily stuff.

P And how long did he do that for?

Timothy I can't really remember. I didn't understand what he was doing. I was crying and wishing my mother could come and get me.

P Then what happened?

Timothy He rolled me over onto my stomach and ... then ... um ... he pushed his finger into my backside.

P Your anus?

Timothy Yes.

P What did you do?

Timothy I yelled out cos it really hurt ... so he stopped.

P Did anything happen on the following nights?

Timothy No, because the next morning I ran back to my place. He drove round to get me later in the day. But I'd locked all the doors. I wouldn't let him in. I told him I'd ring the police if he didn't leave.

P And did you call the police?

Timothy No, I was too scared. I knew what had happened was wrong. I thought I'd be arrested.

P And did you tell your mother?

Timothy: She didn't believe me. She liked Mr Booth. I think they went out a couple of times. And she couldn't see him doing something like that. She said I was making it up to stop her from going out with him. She said I was jealous.

P And were you?

Timothy: A bit, yeah. But, not of him. I wanted his attention, not hers. She never understood that.

P: Thank you, Mr Lyons, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mr Lyons?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

### **Cross-examination of Timothy Lyons**

D You've told us today that in 1997, sometime in December if I can be that vague, that Mr Booth sexually assaulted you?

Timothy Yes.

D And on that night you say you watched a movie?

Timothy Yes.

D And what movie was that?

Timothy It was *Pig in the City*.

D But in your statement to the police, you said you were watching *Hercules*.

Timothy I just got confused, I think.

D So what makes you so sure it was *Pig in the City*?

Timothy Well, um, because I remember Mr Booth was imitating Farmer Hoggett and we laughed about it.

D And what would you say if I said that *Pig in the City* wasn't released until December 1998?

Timothy But that's what I remember.

D So you couldn't have watched that particular movie that night.

Timothy I don't know ... maybe it was *Hercules* ... I can't be sure now.

D I see. And where did you watch this movie?

Timothy On a TV.



D In Mr Booth's bedroom?

Timothy Yes.

D What if I was to say to you that in 1997 Mr Booth didn't have a TV in his bedroom?

Timothy Well, I remember watching a movie in his bedroom that night.

D You're sure you watched it on a TV?

Timothy Yes!

D There's no need to get upset, Mr Lyons.

Timothy I know we watched a movie that night.

D But you're not even sure what movie. And now you say it was on a TV in Mr Booth's bedroom.

Timothy Yes.

D Where was the TV located?

Timothy On top of a chest of drawers.

D I see. And what would you say if I told you the only furniture in Mr Booth's bedroom was a bed and a bedside table?

Timothy No, no, that's not right. I mean ... hang on, he had two places.

D I beg your pardon?

Timothy We had to go to his other place, it was a sort of townhouse, cos he'd left his wallet there. And that's where we had pizza and watched the movie in his bedroom.

D Are you making this up?

Timothy No, ask him, ask Mr Booth about his other place.

D This is the first I've heard about a second house. Why didn't you say this earlier?

Timothy It didn't occur to me, I wasn't asked specifically about which house.

D But it's crucial information that you haven't raised until now. This is very curious, Mr Lyons.

Timothy Only because of the TV.

D And you are absolutely sure you watched a movie that night?

Timothy Yes!

D You've also told the court today that you reported these events to your mother when they occurred in 1997

Timothy Yes.

D She didn't believe you, did she?

Timothy No.

D She didn't believe you because you'd made it up.

Timothy That's not the reason at all. She liked Mr Booth because they went out together a few times.

D You made up the whole story because you were jealous of Mr Booth. You weren't the centre of attention any more, were you? And that's what you wanted, for things to go back to just you and your Mum.

Timothy That's not true.

D Are you on talking terms with your mother, Mr Lyons?

Timothy No, not really.

D And why is that?

Timothy We argue, that's all.

D Argue? About what?

Timothy I don't know, just stuff.

D Because of Mr Booth, isn't it?

Timothy No.

D Are you lying to the court, Mr Lyons?

Timothy I'm not lying.

D But Mr Booth and your mother have been dating, recently, isn't that the case?

Timothy I wouldn't have a clue. I haven't seen my mother for a couple of years.

D And you disapprove of the relationship, don't you?

Timothy It's none of my business what she does.

D So that's why you've made up these allegations against Mr Booth, to stop her seeing him.

Timothy No! That's not the case at all.

Defence: No further questions, Your Honour.

**Judge:** Thank you, Mr Lyons, you may step down from the witness box.

*Mr Lyons exits the witness box.*

**Prosecution:** I call my next witness, your Honour, Mrs Ellen Samuels.

*Mrs Samuels enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mrs Samuels repeats the oath.*

**Examination-in-chief of Mrs Samuels**

Prosecution Please tell the court your full name, date of birth, and age.

Ellen: Ellen Maxine Samuels. I was born on 29 December 1947. I'm now 67.

Prosecution: And what is your occupation and place of work?

Ellen: I'm retired.

P: Do you know the accused, Mr Booth?

Ellen Yes, he was an acquaintance, many years ago.

P Can you explain how you came to know him?

Ellen I used to travel a lot in the 1990s, visiting family mostly, and he looked after my townhouse. He did the garden and collected my mail.

P Can you remember whether he did that for you in December 1997?

Ellen Oh yes, he did. I went overseas in December to celebrate my 50<sup>th</sup> birthday. I was away the whole month.

P And did you have a TV in your bedroom at the time, on top of a chest of drawers?

Ellen Yes, I did.

P: Thank you, Mrs Samuels, I have no further questions.

*Ms Crown sits.*

**Judge:** Mr Pearce, would you like to cross-examine Mrs Samuels?

Defence: Yes, thank you, Your Honour.

*Mr Pearce stands.*

**Cross-examination of Mrs Samuels**

D Mrs Samuels, did Mr Booth have the keys to your townhouse during the 1990s?

Ellen Yes, he had my spare set.

D You're sure about that?

Ellen Yes.

D But you said he only did the garden and collected your mail ... nothing else.

Ellen Well, he needed the keys to put my mail inside.

D You're absolutely sure you gave him a set of keys?

Ellen Yes. I am.

D Did you give him a set of keys every time you went away?

Ellen I think so.

D But you can't be sure?

Ellen I can't vouch for every time I went away, no. It was many years ago.

D Thank you, Your Honour, I have no further questions.

**Judge:** Thank you, Mrs Samuels, you may step down from the witness box.

*Mrs Samuels exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Ms Crown?

**Prosecution:** No, Your Honour, that concludes the case for the prosecution.

*Ms Crown sits.*

**Judge:** Mr Pearce, do you wish to call any witnesses?

*Mr Pearce stands.*

**Defence:** Yes, Your Honour. I call Mr Mark Booth.

*Mr Booth enters the witness box and takes the oath.*

**Judge's Associate:** Please put your right hand on the Bible in front of you and repeat after me: 'I swear by Almighty God that the evidence I shall give will be the truth, the whole truth and nothing but the truth'.

*Mr Booth repeats the oath.*

### **Examination-in-chief of Mark Booth**

D Please tell the court your full name, date of birth, and age.

Mark Mark Robert Booth. I was born on 13 August 1957. I'm 57.

D What is your occupation and place of work?

Mark I'm a self-employed construction manager.

D I'd like to take you back to June 1993 when Simon Rutter joined the under-12 boys soccer team in Kogarah. Were you the coach at the time?

Mark Yes, I was.

D Do you remember meeting Simon?

Mark I don't remember the actual day he joined, no.

D Can you explain the joining up process for the court?

Mark Sure, there was a form to fill in which the boy's parents had to sign and then he got a uniform.

D And who gave out the uniform?

Mark I did.

D Were the boys' parents present?

Mark Oh yes, there was always a Mum or Dad helping the boy try on the shorts and shirt.

D Were you part of that process?

Mark No, I left it to the parents. If the uniform didn't fit, I gave them another size.

D Were you in the habit of grabbing the crotch of a new boy to see how tight his shorts were?

Mark Certainly not.

D Are you sure?

Mark [laughs] In front of a boy's parents? That's absurd. I certainly did not.

D Now ... I understand you befriended Simon Rutter.

Mark Yes, that's right.

D Why was that?

Mark He was always alone at the end of soccer training, I mean all the other kids, their parents were watching the game or they turned to collect them. But Simon had to wait for his Mum who worked on Saturdays.

D So what did you do?

Mark I felt sorry for him, waiting on his own, so I offered him lunch one day at my place and we phoned Mrs Rutter and got her approval.

D And it became a regular thing?

Mark Yeah. It helped her because she never knew what time she'd be finishing work so this way, she didn't have to race or get someone to fill in for her, and Simon wasn't hanging out on the street alone.

D And did Simon ever have a shower at your house?

Mark No, not that I can remember.

D So the two of you *didn't* shower together?

Mark God no.

D So on no occasion did you shower with Simon and offer to dry him with a towel?

Mark No, definitely not.

D And on no occasion did you masturbate his penis or press your body against his?

Mark No, I'm not interested in young boys.

D Did you push Simon into a swimming pool in the middle of August after a thunderstorm?

Mark I don't remember a particular thunderstorm but I didn't have a swimming pool in 1993.

D You're sure about that?

Mark Absolutely. I still have the documents for the sale of that house and there is no swimming pool on the plans.

D What about your neighbours, did they own a pool?

Mark No-one in our street had a pool.

D How would you describe Simon at the time?

Mark He was a bit of handful at times, didn't like being told what to do, what not to do, that kind of thing. Sometimes a bit loose with the truth.

D I see. Now I'd like to take you back to 1995. That was the year in which Justin McCutcheon joined the soccer team and you became friends with his father, is that right?

Mark Yeah, although I already knew his Dad, Peter.

D Were you close friends?

Mark Not really but he used to corner me after soccer training—

D Corner you?

Mark He was mad about football, would talk the legs off a donkey. We used to argue about different teams but in a friendly way. He invited back to his place for drinks or dinner occasionally, you know, and we became pretty good mates.

D And what was your relationship with Justin?

Mark Oh, I was kind of like an uncle, I guess, because Peter travelled a lot. He was a pilot so he asked me to take Justin for swimming lessons, sometimes we went to the movies, game of cricket, you know, father/son type things.

D All of this was with both parents' approval?

Mark Oh yeah, life was full on in their family with Peter away for five days at a stretch, sometimes. Mrs McCutcheon needed help, what with a family of three kids. It was the least I could do.

D Did Justin ever sleep at your house?

Mark Yeah a couple of times I think.

D Where did he sleep?

Mark Oh, he always slept on the couch.

D You didn't share your bed with him, the two of you together?

Mark Certainly not, I don't think his parents would've approved of that.

D Did you ever touch or masturbate Justin's penis?

Mark No, never.

D And did you ever try to get him to touch your penis?

Mark Good Lord, no.

D Did you ever force your penis into his mouth?

Mark Absolutely not. Look, the McCutcheons were friends of mine. They'd invited me into their family and I enjoyed their company. I wasn't about to betray their trust in any way, I can assure you.

D Alright ... now back to 1997. Were you still the coach of the soccer team when Timothy Lyons joined in May that year?

Mark Yes.

D At this time, did you take a group of boys to McDonald's after the soccer game?

Mark Yes.

D Why was that?

Mark I had a team that year who weren't much good at soccer. So I think it started with me saying to one of them, look if you try really hard I'll take you to McDonald's for lunch. And then it just grew from there so I'd take just five or six if they played really well that day.

D Did the parents give their permission?

Mark Oh yes, I always made sure of that.

D How did they get home?

Mark Either I drove them or their parents came and picked them up.

D How did you meet Timothy Lyons' mother?

Mark She invited me in for a cup of tea when I dropped Timothy off.

D Were you ever alone with Timothy during these visits?

Mark Not that I recall.

D Were you ever alone on the back porch with him while Mrs Lyons was in the kitchen?

Mark I wouldn't call it alone, the kitchen opened up onto the back porch. She could see us the whole time.

D Did you ever put make suggestive comments to Timothy during these visits about your sexual interest in his mother?

Mark Definitely not. The suggestion is ridiculous ... we were in full view of his mother whenever she was in the kitchen.

D What was your relationship with her?

Mark We went out a few times, that's all, nothing serious.

D But you offered to look after Timothy when she went to hospital?

Mark Yeah, she asked me. I really couldn't say no, I mean, she needed help and someone had to take care of the boy.

D So he stayed at your place, is that correct?

Mark Yes.

D Did Timothy share your bed?

Mark No, he slept on the couch although he was very worried about his mother, I remember, so I sat with him until he fell asleep.

D Did you watch a video on a TV in your bedroom?

Mark No.

D Are you sure?

Mark Absolutely sure, I've never had a TV in my bedroom.

D Did you have a second residence at that time?

Mark No.

D But you were looking after the townhouse of Mrs Ellen Samuels at this time?

Mark Yes.

D Did you have a key to her townhouse?

Mark Not that I recall.

D Did she give you a key so that you could deposit her mail inside?

Mark No, I used to slide it under the front door.



D So when Timothy stayed with you, you're sure that you slept in your own residence?

Mark Absolutely.

D Did you touch his penis?

Mark No, I certainly did not.

D Did you take his hand and place it on your penis?

Mark No I did not.

D Did you rub his penis with an oily substance?

Mark No, the thought is repugnant.

D Did you at any stage that night insert your finger into Timothy's anus?

Mark Certainly not.

D Did Timothy stay another night at your residence?

Mark No, I took him to the hospital the next day.

D Why was that?

Mark He was worried about his mother even though I said that we would visit her once the operation was over but he wouldn't listen.

D Did you try to reason with him?

Mark Sure, but he was just a scared kid. He was determined to visit the hospital and that was that. So in the end I took him there but he wanted to stay. I think they organised a bed for him in her room.

D Can you tell the court the nature of your relationship with Timothy's mother today?

Mark We've been seeing each other, on and off, for the past couple of years.

D And does Timothy know about this relationship?

Mark He certainly does.

D What was his reaction when he found out?

Mark My understanding is that he does not approve.

D And what have been the consequences?

Mark He refuses to see his mother and me.

D Thank you, Your Honour, I have no further questions.

*Mr Pearce sits.*

**Judge:** Ms Crown, would you like to cross-examine Mr Booth?

Prosecution: Yes, thank you, Your Honour.

*Ms Crown stands.*

**Cross-examination of Mark Booth**

P Mr Booth, the parents of Simon, Justin and Timothy, you assisted them all in some way with their sons, did you not?

Mark I suppose I did.

P But that's your evidence, Mr Booth. You acted as a baby-sitter for Mrs Rutter until she finished work on Saturdays, you acted as an uncle or father figure to Justin and you agreed to look after Timothy while his mother was in hospital. All families you hardly knew.

Mark I don't see your point.

P My point is that you were grooming families you'd never met before or knew vaguely in order to get access to their sons.

Mark That's rubbish, I was doing them a favour, that's all.

P And after offering to assist these parents, you then got permission to take their sons back to your home where each boy was sexually abused.

Mark That's not true.

P Each boy was made to feel special—Simon was the lonely boy whom you took home to feed, Justin was the boy in a large family whose Dad was away a lot and needed a father figure and Timothy was one of the special boys you took to McDonald's after training.

Mark There's nothing wrong with making a young boy feel special.

P Except when it's for criminal purposes.

Mark That wasn't the reason.

P Well, let's look at the circumstances. Mrs Rutter was pleased that you were looking after Simon but then abruptly, the baby-sitting stopped, Mr Booth. Why was that?

Mark I don't know ... well ... I have a theory but I don't know for sure.

P Yes?

Mark All I can think is that he made up some reason ... lied to his mother I guess ... I don't know. Without a dad, he was a young rebel and sometimes I had to bring him into line and he just didn't like it.

P But he was a lonely boy, you were the coach, you'd made him feel special. It doesn't make sense he would want to stop being special and return to being the lonely boy waiting for his mother.

Mark But he wanted being looked after on his terms.

P Did you ever phone Mrs Rutter to find out why there was no further contact?

Mark No.

P Why not?

Mark Look, I had 11 boys in the team, I couldn't be expected to follow each one up.

P But Simon was the one you took back to your place. You said you wanted to help Mrs Rutter, why wouldn't you want to continue doing that?

Mark I tried, it didn't work out. Move on.

P Move on because you'd sexually abused her son and you didn't know what he'd told her.

Mark That's not true.

P Well, what about Justin? You'd become best mates with Peter McCutcheon, filling in as a father figure when he was away, Justin is on top of the world, in his words he's got two fathers and then suddenly he no longer wants to have anything to do with you. He won't get into your car, won't go back to your place anymore and his mother has to arrange to pick him up from the swimming pool when she's got two other children to look after. Why was that?

Mark That's not how I remember things. He stayed in the soccer team until he was 11 or 12, I can't remember now, and when he left, I just didn't have contact with him anymore.

P What about the family?

Mark Yeah, that dropped off as well which was quite normal really.

P But Peter was your best mate. You'd become part of the family.

Mark That's true but kids come and go and so do their families.

P That just doesn't add up, Mr Booth.

Mark We just drifted apart after Justin left the team. It was normal. I had other boys and parents to deal with.

P OK, then there's Timothy Lyons who's one of the special boys you take to McDonald's. You must've known the effect on Timothy as one of your special boys. He doesn't have a father and now suddenly he has you to look up to.

Mark It's normal for the boys in a soccer team to look up to the coach.

P Which allowed you to take advantage of them.

Mark That's not what happened.

P Mrs Lyons must've placed a lot of trust in you when she asked you to look after him.

Mark Yes, I suppose she did.

P And why did you want to help out a woman you hardly knew?

Mark Well, I was attracted to her, I wanted to impress her, I guess.

P Did she ask you or did you offer?

Mark She asked me.

P But it doesn't make sense—a young boy whose mother is in hospital suddenly runs away from your place and goes back home even though he knows no-one is there to look after him.

Mark That's not what happened—Timothy was panicked about his mother. He was determined to visit her. So I took him to the hospital.

P Did you see Mrs Lyons?

Mark No, I wasn't allowed because I wasn't a relative.

P Did you contact her after she came out of hospital?

Mark No.

P Why not?

Mark I can't remember.

P You can't remember? A woman you were attracted to, whose son you'd looked after, you didn't try to find out how she was?

Mark I think she rang me.

P You can't remember because there was no further contact, was there, after what you had done to her son?

Mark No, that's not true.

P There's a pattern here, Mr Booth, of you insinuating yourself into the lives of three families, helping out mothers in need, getting them to trust you so that you can take their boys to your place and then the boys no longer want to have anything to do with you. The coach that everyone trusts, the father figure, the saviour, and suddenly everything turns sour.

Mark That's not how it was.

P Because you took advantage of everyone's trust and sexually abused those three boys when you should've been caring for them.

Mark No! That's not true.

P I have no further questions, your Honour.

**Judge:** Thank you, Mr Booth, you may step down from the witness box.

*Mr Booth exits the witness box.*

**Judge:** Are there any more witnesses you wish to call, Mr Pearce?

**Defence:** No, Your Honour, that concludes the case for the accused.

*Mr Pearce sits.*

**Judge:** Very well, I take it you are both ready to present your closing addresses?

*Ms Crown stands.*

**Prosecution:** Yes, Your Honour.

*Ms Crown sits. Mr Pearce stands.*

**Defence:** Yes, Your Honour.

*Mr Pearce sits.*

**Judge:** You may now address the jury, Ms Crown.

*Ms Crown stands.*

### **Prosecution's Closing Address to the Jury**

Thank you Ladies and Gentlemen, for your attention during this trial. It's now time for me to summarise the Crown's case against Mr Booth. You'll remember that Mr Booth has been charged with six separate counts of sexual assault against three complainants. I will deal with each count separately to make things clearer for you.

Count 1 is an act of indecency against a person under the age of 16 years, namely Mr Simon Rutter. The evidence that supports Count 1 is unquestionable.

You'll remember Simon's clear and concise testimony when he explained how, at the age of 11, the accused masturbated Simon's penis in his bathroom in August 1993, as he pressed his body against Simon. This assault is clearly indecent since it has a sexual overtone and is contrary to the standards of ordinary, respectable people in our community. Mr Booth took Simon into his home on the pretext of providing lunch in order to help out Simon's single mother. Mr Booth took advantage of the fact that Simon was alone, that he was isolated from his family and friends, and after he had pushed him into a freezing cold swimming pool, the accused masturbated Simon's penis. You'll also remember that Simon's testimony was totally unshaken during cross-examination even when it was suggested to him that he had fabricated his allegation of sexual assault in order to make a claim for victims' compensation. He denied that motivation and gave a credible explanation as to why he made his complaint against Mr Booth some years later.

Counts 2 and 3 are acts of indecency towards a person under the age of 16 years, namely Mr Justin McCutcheon. Justin told you about his excitement in having a second father to go out with while his real father travelled for work. Mr Booth stepped into the breach, having becoming close friends with Justin's father, and offered what any family would want, someone to take their eldest son under his wing. You heard Justin's testimony about how his trust and the trust of Justin's whole family was betrayed on that occasion in Mr Booth's bed. Justin's distressing evidence proves beyond reasonable doubt the acts of indecency, when Mr Booth took Justin's hand and placed it on his own penis, forcing him to masturbate it. Justin described how Mr Booth masturbated Justin's penis and his own for at least half an hour, while Justin lay there frozen, frightened, trapped, shocked and utterly confused. These assaults were indecent according to our community standards.

The next count is count 4. You'll recall Justin's harrowing testimony about how his innocence was terribly and irrevocably lost on that occasion when Mr Booth parked his car, pushed Justin's head into his lap and forced his penis into Justin's mouth, the act of sexual intercourse.

Today you also heard from Mrs McCutcheon about the changes to her son's personality. Even though Justin kept Mr Booth's secret, he did everything he could to protect himself from this man, a man he could no longer trust, whose car he knew he could no longer risk getting into, even to go to the swimming pool. Justin's personality totally changed. Gone was the good student, the obedient child. Mrs McCutcheon explained how Justin became argumentative and angry, wagging school, lying to his teachers. But she went to great lengths to protect her son from something she knew was bad even though Mr McCutcheon could not accept that his best friend could have harmed his son. Mrs McCutcheon's testimony corroborates Justin's evidence.

You'll also recall the evidence of Aaron Sorkin, Justin's best friend at school who further corroborated Justin's evidence. He confirmed that Justin *did* tell someone about what happened to him back in 1995. Although Justin didn't give many details he was clearly upset when he confided in Aaron that Mr Booth had done sexual things to him. Aaron Sorkin's evidence is known as 'hearsay evidence', which means that Aaron was not present to observe what occurred between Justin and the accused. If you accept the evidence of Aaron Sorkin and Mrs McCutcheon you can use it to assess Justin's credibility as a witness since he has been accused of lying by the accused because he resented the accused's friendship with his father, a motivation, which he strongly denied. You will find that the evidence of Justin, his mother and Aaron proves beyond reasonable doubt the elements of count 4.

The next count, count 5, is act of indecency towards a person under the age of 16 years, namely Timothy Lyons. You will vividly remember the testimony of Timothy who described the pizza Mr Booth bought for him and how they watched a movie together. Then when Mr Booth had got Timothy into his bed, he took advantage of him, touching his genitals and trying to persuade Timothy to touch Mr Booth's penis. When that didn't work, Mr Booth used an oily substance to rub Timothy's penis on the pretext of calming him down. All the while Timothy cried, wishing his mother would come to rescue him. This assault was clearly indecent according to community standards. On the basis of Timothy's unshakeable evidence, you will find the elements of count 5 are proved beyond reasonable doubt.

The final count is count 6. You'll remember Timothy's testimony about the hospitalisation of his mother and how Mr Booth offered to take care of him. Recall the events of that night in December 1997 when Timothy had to share Mr Booth's bed. While he had Timothy under his care, rather than looking after his welfare Mr Booth took advantage of Timothy's vulnerability. He turned Timothy onto his stomach and inserted a finger into Timothy's anus until young Timothy cried out in pain and distress. This sexual act is defined as sexual intercourse under our Crimes Act.

When questioned about his evidence, Mr Lyons did not waver in relation to where these assaults occurred and the circumstances in which they occurred, even though he may have been confused about the particular video he watched with the accused. When challenged about the furniture in the accused's bedroom, Mr Lyons revealed he had been taken to another residence in which there *was* a TV on top of a chest of drawers in the bedroom. You heard the evidence of Mrs Ellen Samuels who confirmed that her bedroom had identical furniture at a time when she was overseas and the accused had a key to her townhouse.

Finally, during cross-examination it was suggested to Timothy that he had fabricated his allegations because he was jealous of his mother's relationship with the accused. This he denied because he was unaware of the current relationship between them, having not spoken to his mother for a couple of years.

Ladies and gentlemen, I have now summarised the evidence of three complainants all of whom had no contact with each other. They did not know each other during the time they were members of the under-12 Kogarah soccer team in different years. But they describe similar patterns of behaviour by Mr Booth. Each of them suddenly stopped seeing Mr Booth even though he was a father figure in their lives. You have to ask yourselves, why? And why did Mr Booth not contact the boys' parents again?

The Crown's case is that Mr Booth is a serial sex offender who groomed young boys and their families in order to get the boys alone so he could satisfy his sexual desires. This means that the accused had a tendency to act in particular ways. Relying on this tendency, you can use evidence from one complainant in relation to

another complainant if you find beyond reasonable doubt that that tendency is proved on the basis of one complainant's evidence or on the basis of two of the complainants' evidence.

The tendencies I am talking about are Mr Booth's patterns of behaviour that can be gleaned from the evidence of Simon, Justin and Timothy—a pattern showing the accused's sexual interest in young boys, how he used his position as soccer coach to gain access to them, and then took them to his house, or in his car, where he sexually assaulted them. The accused does not deny that, as their coach, he built up a relationship of friendship and trust with their families. He admitted offering to help Mrs Rutter, by baby-sitting Simon on Saturdays. He befriended Justin's father, socialised with the McCutcheons and then offered to take Justin out on weekends when Justin's father was away. He drank tea with Mrs Lyons, and even went on a few dates with her. He made sure that each of the three families trusted him, that the boys trusted him and viewed him as a fun, father figure.

Each of the three complainants was missing a father figure in their lives. Simon's and Timothy's father don't live with them. Justin's father is away a lot. Mr Booth noticed this, giving each boy special attention, providing meals, or special outings, becoming a surrogate father for each boy.

He then created opportunities where he could be alone with the boys. He took Simon back to his house for lunch after soccer training. He took Justin to the movies and got Mrs McCutcheon's permission for Justin to sleep over after a movie. He drove Justin to and from the swimming pool in his car and used that opportunity to get Justin alone in his car. He took Timothy to stay with him when Mrs Lyons was in hospital.

When he first started touching the boys, it was affectionate or playful touch—an arm around the shoulder, ruffling of the hair or a grab in the crotch to see if the boy's shorts were too tight. Gradually, he sexualised each of the relationships, creating secretive sexual games. He made suggestive remarks or played with their penises in a joking way as if it was what all boys and men did together. He got all three of the boys naked, either in the shower, or in his own bed. All of this shows the slow build up towards the next stage where the accused makes more serious sexual contact with each boy, making sure they are comfortable with what appears to be playful touching.

This pattern of behaviour proves a tendency to act in a particular way—to befriend a young boy's mother or father, to gain their trust, to offer to become the boy's surrogate father, to create opportunities where he could be alone with each one, to sexualise the relationship with each boy before finally engaging in sexual acts with them. The pattern that emerges with Simon is repeated with Justin and repeated again with Timothy. When the boys no longer want anything to do with him, he ceases contact with them and their parents.

Ladies and Gentlemen, the evidence against Mr Booth is overwhelming. While the facts are shocking the case is straight-forward. Don't accept the accused's denials in the face of this harrowing evidence. The evidence of these three men and the other Crown witnesses have given you sufficient grounds to find that the elements of each count have been proved beyond reasonable doubt. You should find Mr Booth guilty on all six counts.

Thank you your Honour.

*Ms Crown sits.*

**Judge:** Thank you, Ms Crown. Mr Pearce, you may make your closing statement to the jury.

*Mr Pearce stands.*

**Defence:** Thank you your Honour.

### **Defence's Closing Address to the Jury**

Ladies and Gentlemen of the jury, I also want to thank you for your attention in this trial. I want to remind you of the presumption of innocence which means that the accused is innocent until you decide otherwise.

You should *only* find him guilty if the prosecution evidence is so convincing that there is no reasonable doubt in your minds.

Simon Rutter, Justin McCutcheon and Timothy Lyons have accused my client of a number of very serious offences when they were in his care. Your job is to carefully and methodically examine their credibility and the reliability of their evidence. Are they credible witnesses? Is all their evidence reliable? Could they be mistaken about certain events? Because in reality their evidence and the evidence of the other prosecution witnesses just doesn't stack up. So you must consider whether they've fabricated their allegations. First of all, Simon Rutter got his dates all confused—first it was March 1993 and then it became July 1993. How can someone, in relation to something as serious as his allegations, get the dates so fundamentally confused? That is what you have to ask yourselves, Ladies and Gentlemen.

Not only that, Simon expects you to believe that his first contact with Mr Booth was when my client, in broad daylight, in front of other children and adults, grabbed Simon's crotch to see how tight his shorts were and that this was something he did regularly with other boys. I'm afraid it beggars belief that a soccer coach would do such a thing in public. This should be enough to make you question the whole of Simon's evidence. As Mr Booth said in his evidence, it's absurd. But there are other reasons why you should question Simon's evidence. Simon was not pushed into a swimming pool after a thunderstorm by Mr Booth as an apparent excuse to force him into having a shower because there *was* no such swimming pool. And there could not have been a thunderstorm since no rain was recorded for 15 days in the middle of August in 1993. Mr Booth did not own a house with a swimming pool in 1993, nor did any of the neighbours in his street. Around the age of 12, Simon Rutter was nothing short of a handful, as Mr Booth explained. Maybe there are good reasons why a young boy would be like this—his father isn't around, he lives alone with his mother, he's become the man of the house after his father left, he doesn't like being told what to do and when Mr Booth tries to set boundaries, Simon can't cope. You also heard today that Simon had another very good reason to make up his allegations against Mr Booth. His victim's compensation claim will make his life a lot easier by relieving his financial stress because he has a long history of casual and unstable work, something to take into account when assessing the credibility of Simon as a witness.

Then we have the evidence of Justin McCutcheon who wants you to believe that Mr Booth, the man who befriended his family, would suddenly, out of the blue, fondle Justin's penis in circumstances where Mr Booth had been given the responsibility for looking after Justin, when Justin's mother had placed her complete trust in him, and Justin's father, the trust of a good mate. We're asked to believe that Mr Booth betrayed this trust and lay in bed with him for an hour, maybe longer, masturbating himself and Justin. Yet Justin told you that he stayed in the bed, he didn't try to get away, he didn't try to stop what was happening to him. He wasn't a baby, he was an 11 year old boy with a mind of his own.

Then a week after the alleged sexual assault, Justin willingly gets get into Mr Booth's car to go swimming. And again, out of the blue, you are asked to believe that Mr Booth stopped in a park in broad daylight, in public, and forced his penis into Justin's mouth when Justin was in his care, with his parents' blessing. Around this time, Justin was a proven liar, wagging school and forging his parents' signatures to explain his absences. A boy who was good at making up stories. So you have to ask yourselves, Ladies and Gentlemen, is that what Justin's evidence is? An elaborate story? A pack of lies? From Mrs McCutcheon we learned that Justin was quite a feisty boy at the time, argumentative, causing a lot of trouble for his parents. If something had happened why didn't he tell his worried mother? And if he was so feisty back then why didn't he try to stop the sexual abuse? Why did he willingly get into Mr Booth's car? Why didn't he become argumentative and difficult with Mr Booth if that's what really happened?

You also heard Mrs McCutcheon testify that despite her fears and worries she continued to let Mr Booth take Justin swimming. Despite her suspicions, she didn't confront Mr Booth at any stage. Why wouldn't a concerned mother do something? Wouldn't she confront Mr Booth? Stop the outings? Do more to protect her son? But Mrs McCutcheon admitted she never saw Mr Booth do anything suspicious at the time. So is it all an exaggeration, her evidence today in court? That's what you have to ask yourselves, Ladies and Gentlemen.



Finally, the evidence of Timothy Lyons just doesn't stand up to scrutiny. First of all he couldn't be sure which movie he watched the night he said terrible things happened to him. Then he said that he'd watched a movie released one year later on a TV in Mr Booth's bedroom even though Mr Booth didn't have a TV in his bedroom at the time. Finally, Timothy reveals, for the very first time, that Mr Booth had *two* houses, *two* bedrooms, something he'd never even mentioned before. Why not? Wouldn't that be one of the things that would stick in your mind? This unusual situation where a man has two bedrooms? And when Timothy told his mother that Mr Booth had sexually abused him, his mother didn't believe him. Why was that? Was it because she could see through the lies, to a young boy's attempt to stop his mother from seeing her boyfriend so his life could go back to normal? So he could be the centre of attention once more?

I ask you to consider the glaring inconsistencies in the evidence of these three men, their confusion in relation to key details, the inconsistencies in their behaviour at the time, the inconsistencies in Mrs McCutcheon's behaviour. The prosecution's entire case rests on the unreliable testimony of three men who all had reasons to fabricate their evidence. These inconsistencies should be enough to raise reasonable doubts in your minds in relation to all six counts with which my client has been charged.

Finally, you heard Mr Booth's clear denials when he gave evidence. He did not waver under cross-examination. He simply befriended each family because they needed assistance with their sons which he willingly gave. This assistance is entirely consistent with his voluntary work as a soccer coach throughout the 1990s. He was a friend to these families and to their sons. They enjoyed each other's company in a father/son type relationship and then when the boys left the soccer team at the age of 12 years, it was quite normal for that contact to drop off.

When you consider all the evidence together, you will see that there are just too many reasonable doubts, Ladies and Gentlemen. For that reason, you must acquit my client, Mr Booth, of all six counts of sexual assault.

Thank you your Honour.

*Mr Pearce sits.*

**Judge's summing up:**

**Judge:** Members of the jury, it is for you to assess the evidence of each of the complainants, the other Crown witnesses and the accused. You are not obliged to accept the whole of their evidence. You may, if you choose, accept parts of their evidence and reject other parts of their evidence.

You have heard addresses from counsel for the Crown and counsel for the accused. I remind you that in no sense do those submissions amount to evidence in the case.

You must not let sympathy or emotion sway your judgment. You are expected to use your individual qualities of reasoning, experience, common sense, as well as your understanding of people and human affairs during the course of your deliberations.

A critical part of the criminal justice system is the presumption of innocence. This means that a person who is charged with a criminal offence is presumed to be innocent unless and until the Crown persuades a jury that the person is guilty beyond reasonable doubt.

That burden rests upon the Crown in respect of every element or essential fact that makes up the offences with which the accused has been charged. That burden never shifts to the accused. There is no obligation whatsoever on the accused to prove any fact or issue that is in dispute before you. It is not for the accused to prove his innocence but for the Crown to prove his guilt in relation to each offence and to prove it beyond reasonable doubt. The Crown does not have to prove, however, every single fact in the case beyond reasonable doubt.

At the end of your consideration of the evidence in the trial and the submissions made to you by the parties you must ask yourself: ‘Has the Crown proved the guilt of the accused beyond reasonable doubt?’ If the answer is “Yes”, the appropriate verdict is “Guilty”. If the answer is “No”, the verdict must be “Not guilty”.

You will be required to deliver six different verdicts. Whether your verdicts are “guilty” or “not guilty”, they ought to be unanimous.

#### ELEMENTS OF EACH COUNT

In this trial, the Crown must prove each element of each of the six counts against the accused.

#### **Counts 1, 2, 3 and 5 – act of indecency**

For these four counts, the Crown must prove the following elements beyond reasonable doubt:

13. That at the time and place alleged in each count;
14. The accused committed an act of indecency;
15. That the act was indecent; and
16. At the relevant times, Simon Rutter, Justin McCutcheon and Timothy Lyons were under the age of 16 years.

**Indecent:** The word indecent means contrary to the standards of ordinary and, therefore, respectable people in this community. For an act to be indecent it must have a sexual connotation or overtone. It is for you to determine the standards prevailing in our community. The law provides that a child under 16 years of age cannot consent to an act of indecency.

#### **Count 4 – sexual intercourse against a child above the age of 10 years and under the age of 14 years**

For this count, the Crown must prove the following elements beyond reasonable doubt:

1. That at the time and place alleged in the count;
2. The accused had sexual intercourse with Justin McCutcheon; and
3. At the time Justin McCutcheon was above the age of 10 years and under the age of 16 years.

**Sexual intercourse:** “sexual intercourse” is defined under our Crimes Act to include “sexual connection occasioned by the introduction of any [part](#) of the penis of a [person](#) into the mouth of another [person](#)”. The law provides that a person under the age of 16 years old does not have the capacity to consent to sexual intercourse.

#### **Count 6 – sexual intercourse against a child above the age of 10 years and under the age of 14 years**

For this count, the Crown must prove the following elements beyond reasonable doubt:

10. That at the time and place alleged in the count;
11. The accused had sexual intercourse with Timothy Lyons; and
12. At the time Timothy Lyons was above the age of 10 years and under the age of 16 years.

**Sexual intercourse:** “sexual intercourse” is defined under our Crimes Act to include “sexual connection occasioned by the penetration, to any extent, of the anus of any person by any part of the body of another person.” The law provides that a person under the age of 16 years does not have the capacity to consent to sexual intercourse.

Finally, I remind you that the failure to prove any element of any count beyond reasonable doubt would mean that the accused is not guilty of that count.

#### SEPARATE CHARGES AND ALTERNATIVES

You must consider each count separately and return a separate verdict of guilty or not guilty on each of the counts. This means that you are entitled to bring in verdicts of guilty on some counts and not guilty on other counts if there is a good reason in the evidence for that outcome.

If you accept beyond reasonable doubt that what each complainant said actually occurred then the case on each count would be proved. But if you have a reasonable doubt concerning the truthfulness or reliability of the evidence of one of the complainants in relation to one or more of the counts pertaining to them, that doubt must be taken into account in assessing the truthfulness or reliability of that complainant's evidence generally. If you were to find the accused not guilty on one count, particularly if that was because you had doubts about the reliability of one of the complainant's evidence, you would have to consider whether or how that conclusion affected your consideration of the remaining counts involving that particular complainant. While you must consider each count separately, there must be a logical consistency in your verdicts.

## INSTRUCTIONS ABOUT HOW TO USE THE EVIDENCE

If you find Simon's evidence to be truthful, it is sufficient to satisfy the elements of act of indecency that the prosecution must prove beyond reasonable doubt for Count 1.

If you find Justin's evidence to be truthful, it is sufficient to satisfy the elements of act of indecency that the prosecution has to prove beyond reasonable doubt for Counts 2 and 3.

In addition, if you find Justin's evidence to be truthful, it is sufficient to satisfy the elements of sexual intercourse against a child that the prosecution has to prove beyond reasonable doubt for Count 4.

If you find Timothy's evidence to be truthful, it is sufficient to satisfy the elements of act of indecency that the prosecution has to prove beyond reasonable doubt for Count 5.

Finally, if you find Timothy's evidence to be truthful, it is sufficient to satisfy the elements of sexual intercourse against a child that the prosecution has to prove beyond reasonable doubt for Count 6.

Finally, the evidence of the accused should be treated in same way as that of other witnesses.

However, just because the accused testifies does not mean that the onus of proof shifts to the accused. Even if you reject the evidence of the accused, you must still be satisfied that the prosecution has established beyond reasonable doubt that the accused has committed each element of the six charges against him.

## TENDENCY EVIDENCE

As you are aware, the accused is charged only with the offences stated in the indictment. Generally, juries may only consider the evidence that is directly related to each charge against the accused.

In certain cases the Crown may be allowed to add to the evidence it calls to prove guilt of a particular charge. The law calls this added evidence, "tendency evidence". Here, the Crown can assert, in proof of any (or all) of the charges, a pattern of behaviour revealing that the accused had a tendency to act in a particular way. Here, the Crown asserts that at the time of the alleged offences, the accused:

1. had a tendency to have a sexual interest in young boys under the age of 12;
2. had a tendency to engage in sexual activities with young boys under the age of 12;
3. had a tendency to use his position of authority as a soccer coach to gain access to young boys under the age of 12 so that he could engage in sexual activity with them.

The Crown asserts that the tendencies of the accused are drawn from the evidence related to all the charges. These include:

7. using his position as soccer coach to befriend the parents of young boys and gain their trust;

8. offering to act as a surrogate father to young boys whose fathers were absent;
9. offering to take young boys on outings;
10. grabbing or touching young boys in the crotch;
11. taking young boys to his house, alone; and
12. getting young boys naked while they were in his home alone.

How can you use this evidence? The Crown relies upon this evidence to prove beyond reasonable doubt that the accused had a sexual interest in each complainant and was willing to act upon it in the way that each complainant alleges. The Crown argues that you will find the accused's sexual interest proved beyond reasonable doubt and therefore you can use it to prove the allegations in the indictment beyond reasonable doubt. First of all, the Crown says that you will be satisfied that the accused had a sexual interest in Simon Rutter on the basis of the acts of a sexual nature committed against Simon Rutter.

The Crown also says that you will be satisfied that the accused had a sexual interest in Justin McCutcheon on the basis of the acts of a sexual nature committed against Justin McCutcheon.

Finally, the Crown says that you will be satisfied that the accused had a sexual interest in Timothy Lyons on the basis of the acts of a sexual nature committed against Timothy Lyons.

Before you can use the evidence of these other acts of a sexual nature in the way the Crown asks you to do so, you must make two findings beyond reasonable doubt. The first is that you must be satisfied beyond reasonable doubt that the sexual act against Simon Rutter occurred. In making that finding, you consider all of Simon's evidence and ask yourself whether you are satisfied that the particular act took place.

If you cannot find that this act described by Simon is proved by the Crown beyond reasonable doubt, then you must put aside any suggestion that the accused had a sexual interest in Simon Rutter, and decide the case on rest of the evidence. If you are satisfied beyond reasonable doubt that this sexual act against Simon occurred, then you go on to consider the second finding. You ask yourself whether, from the act that you have found proved, you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Simon Rutter.

If you cannot draw that inference or conclusion beyond reasonable doubt, you must put aside any suggestion that the accused had a sexual interest in Simon Rutter.

If you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Simon Rutter, you may use that fact in determining whether the accused committed the offences against Justin McCutcheon and Timothy Lyons.

Similarly, if you decide that one or more of the acts *against Justin McCutcheon* is proved beyond reasonable doubt and you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Justin McCutcheon, you may use that fact in determining whether the accused committed the offences against Simon Rutter and Timothy Lyons.

And finally, if you decide that one or more of the acts *against Timothy Lyons* is proved beyond reasonable doubt and you can infer or conclude beyond reasonable doubt that the accused had a sexual interest in Timothy Lyons, you may use that fact in determining whether the accused committed the offences against Simon Rutter or Justin McCutcheon.

The evidence must not be used in any other way. It would be completely wrong to reason that, because the accused has committed one offence or is guilty of one piece of misconduct, he is therefore generally a person of bad character and for that reason must have committed all the offences charged. You must not reason in that way.

You cannot use the tendency evidence in any way prejudicial to the accused unless you accept the Crown's argument that it shows that the accused had a sexual interest in, for example, Simon Rutter which therefore

makes it more likely that the accused committed the other offences charged against him, that is those involving Justin McCutcheon and Timothy Lyons.

Remember that you are required to find that the elements of each specific charge are proved beyond reasonable doubt before you can find the accused guilty of that charge.

#### DELAY IN COMPLAINT

The delay in making a complaint is a matter that you may take into account in assessing the credibility of the complainant's evidence. In relation to both counts, there was delay of decades between the alleged incidents and the matters being reported to police.

However I am required by law to direct you that a delay in complaint, even a long delay, does not necessarily mean that a complaint is false. There may be good reasons why a person who alleges they have been sexually assaulted may fail to report, to delay in reporting, such an offence.

From your own knowledge of the world, you might think that there could be cases where embarrassment, guilt or worry about the reactions of family or friends might cause a person who alleges sexual abuse to suppress what has taken place.

#### PRACTICAL PROBLEMS FOR THE DEFENCE CAUSED BY LONG DELAY IN REPORTING

It is most important that you appreciate the effects of delay on the ability of the accused to defend himself by testing the prosecution's evidence or bringing forward evidence in his own case, to establish a reasonable doubt about his guilt.

One of the effects is the inability to properly inspect Mr Booth's former residences to determine the layout of Mr Booth's bedroom about which Timothy Lyons gave evidence. There is also the inability to determine the existence of another house or apartment that Mr Booth may have used. These difficulties put the accused at a significant disadvantage in testing the prosecution evidence, or in bringing forward evidence to establish a reasonable doubt about his guilt, or both.

Had the allegations been brought to light and the prosecution commenced much sooner, the complainant's memory for details would have been clearer, such as when the alleged incidents occurred. This may have enabled his evidence to be checked against independent sources so as to verify it, or disprove it. The complainant's inability to recall precise details of the alleged incidents makes it difficult for the accused to throw doubt on the complainant's evidence by pointing to the circumstances which may contradict him.

Another aspect of the accused's disadvantage is that if he had learned of the allegations at a much earlier time he may have been able to find more witnesses or items of evidence that might have either contradicted the complainant or supported his case, or both.

As a result, I warn you that before you convict the accused you must give the prosecution case the most careful scrutiny and bear in mind the matters I have just been speaking about—the fact that the complainant's evidence has not been tested to the extent that it otherwise might have been and the diminished ability of the accused to bring forward evidence to challenge it, or to support his defence.

However, I am not telling you that these problems for the accused make it impossible for the prosecution to prove its case. If, after carefully considering my warnings and scrutinising the complainant's evidence with great care (in the context of all the other evidence) you are well satisfied of the truth and accuracy of the complainant's evidence and you are satisfied beyond reasonable doubt that any of the alleged offences did occur, then it is your duty to return a verdict of guilty in relation to that matter.

With a final reminder that the verdicts you reach must be unanimous, I ask you to retire to the jury room to consider your verdicts.

