Part 12 - Should the convictions be quashed?

156

I have already related Davidson ADCJ's findings in relation to each count when separately considered. In relation to counts 5 and 9 fresh evidence has been tendered which his Honour concludes leads to the conclusion that the convictions in relation to those counts must be quashed. With respect to counts 1, 2, 3, 4, 6 and 7 Davidson ADCJ expressed the following general conclusions:

"COUNTS 1, 2, 3, 4, 6 AND 7

Whilst there is evidence to support the conviction as to each of Counts 1, 2, 3, 4, 6 and 7, it is reasonably possible as to all counts that the acceptance by the jury of the Crown's case and their rejection of Ms Catt's, may have been substantially influenced, directly or indirectly, by the evidence of Ms Marie Whalen and Mr Shane Golds; the evidence of Const Cottee and Det Sgt Thomas as to the finding of an unlicensed pistol; the evidence of Det Paget as to the finding of Lithium and Rivotril in a handbag; the evidence of Mr Newell as to the finding of Rivotril on 5 September 1989 at 1 Cornwall Street and his evidence and that of Mr Catt as to a mandarine and other consumables (see paras. 689-727; 760; 784; 828-836; 872).

157

The notice of appeal does not clearly identify the separate basis upon which it is contended that there has been a miscarriage of justice which would lead to the convictions being quashed. The notice contends that Det Sgt Thomas was corrupt and had a propensity to manufacture and invent evidence. As I understand the argument of the appellant the alleged propensity of Det Sgt Thomas to act in this way is to be considered together with the

other matters of fresh evidence identified in paragraph 3 of the notice of appeal which raise individual matters, including some where Det Sgt Thomas was directly involved. The submission is that taken as a whole, the fresh evidence is such that there is a significant possibility that a jury acting responsibly would have acquitted the accused.

158

The"Whether the court considers that there is a significant possibility that the jury, acting reasonably, would have acquitted the appellant had the fresh evidence been before it at the trial." At 273

159

Dawson J, in Gallagher v The Queen (1986) 160 CLR 392 at 421, adopted the formula whether "a jury might entertain a reasonable doubt about the guilt of the appellant." Gibbs CJ although embracing the formulation of the majority was careful to point out that "no form of words should he regarded as an incantation that will resolve the difficulties of every case" (Gallagher at 399).

160

In Mickelberg Brennan J expressed his continuing preference for a formulation which addressed the question "whether the jury, if the fresh evidence had been laid before it together with the evidence given at the trial, would have been likely to have entertained a reasonable doubt about the guilt of the accused" p 275.

161

In Mickelberg Toohey and Gaudron JJ said of the question:

"The underlying rationale for a court of

criminal appeal setting aside a conviction on the ground of fresh evidence is that the absence of that evidence from the trial was, in effect, a miscarriage of justice: see eg, Gallagher v The Queen (1986) 160 CLR 392 at pp 395, 402, 410. There is no miscarriage of justice in the failure to call evidence at trial if that evidence was then available, or, with reasonable diligence, could have been available: see Ratten v The Queen (1974) 131 CLR 510 at pp 516-517 per Barwick CJ, noting however, that there may be somewhat greater latitude in the case of criminal trials than in the case of civil trials. See also Lawless v The Queen (1979) 142 CLR 659 at pp 666, 675-677.

There is no very precise formulation of the quality which must attach to fresh evidence before it will ground a successful appeal. It has been said that it must be 'credible', 'cogent', 'relevant', 'plausible': see eg, Gallagah (1986) 160 CLR at pp 395-396, 401-402, 408-409; Craig v The King (1933) 49 CLR 429 at p 439; Ratten (1974) 131 CLR at pp 519-520; Lawless (1979) 142 CLR at pp 671, 676-677. In essence, the fresh evidence must be such that, when viewed in combination with the evidence given at trial, it can be said that the jury would have been likely to entertain a reasonable doubt about the guilt of the accused if all the evidence had been before it (Gallagher (1986) 160 CLR p 410, per Brennan J) or, if there be a practical difference, that there is 'a significant possibility that the jury, acting reasonably, would have acquitted the [accused]' (Gallagher (1986) 160 CLR at p 399), per Gibbs CJ and per Mason and Deane JJ (1986) 160 CLR at p 402)). If th ere is a difference it is not material to the outcome of the present applications. For ease of expression we proceed by reference to the formulation that the jury is likely to have entertained reasonable doubt had all the evidence been before it, noting, in that context, that it is necessary that the fresh

evidence be credible in the sense that a reasonable jury could accept it as true, but it is not necessary that the court should think it likely that a reasonable jury would believe it: see Lawless (1979) 142 CLR at pp 676-677, per Mason J and Gallagher (1986) 160 CLR at p 410, per Brennan J, but cf Barwick CJ in Ratten (1974) 131 CLR 519-520." At 301-302

162

In the present case all of the counts were dealt with in the one trial. As a consequence there was a risk, notwithstanding the care with which her Honour directed the jury, that the jury's conclusion in relation to issues of the appellant's credit, on one or more of the counts, would influence the view which they came to on other counts. It must be remembered that the defence case was that the prosecution was the result of a conspiracy between the relevant police, led by Det Sgt Thomas, Barry Catt and Mr Newell who brought under their control various others who gave evidence against the appellant.

163

Although there is fresh evidence from Barry Catt's children which supports the Crown, that evidence is, in my opinion, of little value in determining whether this Court should now intervene. On the other hand there is a substantial body of fresh evidence which would assist the appellant's case, at least on some counts, before a jury.

164

Of this evidence the most powerful, if accepted by a jury, is that of Mr Caesar to the effect that Det Sgt Thomas participated in the fabrication of evidence with respect to the gun and the lithium. If accepted by a jury the propensity thereby demonstrated to use illegal methods to create a case against the appellant

would inevitably influence the view which a jury would take of the evidence of Mr Golds, Mr Morris and Mr Newell. The fresh evidence which, if accepted, demonstrates that the evidence of Ms Whalen may be unreliable is such that a jury could have come to a different view of the credit of the appellant on many contested issues.

165

One issue which was central to the appellant's credit at the trial was whether her allegation that Barry Catt had sexually abused his children was a fabrication by her intended to discredit Barry Catt. Although the evidence of the children themselves was critical to the issue, the evidence of Ms Whalen was important and, if accepted by the jury, would have been significant in any view which the jury formed of the appellant's credit. It is true, as the Crown submits, that Ms Whalen's evidence is not directly relevant to any of the charges. However, it is potentially of critical importance in relation to the appellant's credit. The fresh evidence which Davidson ADCJ received and which his Honour found a jury could accept, casts the evidence of Ms Whalen in a different light and would be significant in any consideration by a jury of whether the appellant was the victim of a conspiracy to bring a false case against her.

166

The difficulty in the resolution of the appeal is that, having regard to the fresh evidence in relation to admissions by Det Sgt Thomas as to his actions and evidence of his method of investigation and his possible motive to corruptly secure the conviction of the appellant, it is necessary to consider the extent to which this could have influenced a jury's verdict in relation to counts, other than count 9, where Det Sgt Thomas' evidence is of direct relevance. The problem is significant

and although resolved by Davidson ADCJ in favour of the appellant I do not believe his Honour's conclusions are appropriate in relation to all of the counts. In some instances the evidence which was accepted by the jury was so strong that the possible influence of Det Sgt Thomas could not, to my mind, have rationally caused a jury to enter a verdict of acquittal on those counts.

167

In a detailed submission the Crown argues that Davidson ADCJ erred in his conclusion with respect to the characterisation of some of the evidence his Honour received as "fresh evidence" and submits that the evidence now given by the Catt children is highly probative direct evidence which has made a strong Crown case overwhelming.

168

The Crown submission has been prepared in great detail and contains submissions in relation to every witness and the issues at the trial and the Section 12 hearing. Although I have carefully considered all that has been written it would be a considerable task, particularly having regard to the manner in which the submissions are constructed, to explain my reasoning in relation to every point raised by the Crown. Having regard to the conclusions I have reached it would also be unnecessary. These reasons are already of considerable length and to extend them further would have taken considerably more time.

169

The Crown submits that this Court should "not accept" any of the evidence of Mr Peter Bridge, Ms Julieanne Bridge, Ms Faye Klarenbeek, Ms Joy McGregor, Mr Peter Caesar, Mr Graeme Fellows, Mr Gordon Henderson, Ms Anne Strachan, Ms Jeannie Strachan, Ms Kellie Perez and Mr Errol Taylor. Submissions were made that in various

ways their evidence was tainted and could not be given any weight.

170

The approach which Davidson ADCJ took to the evidence of each witness and the findings which his Honour made of relevance to this appeal are recorded in his Honour's judgment. I am not persuaded that his Honour has fallen into any relevant error in relation to a finding made with respect to any of these witnesses.

The Crown also made submissions attacking the credit of the appellant. It is submitted that she gave false evidence in relation to Ms Beverly Lyons and her knowledge of her, gave false evidence about Dr Sandfield, forged Barry Catt's signature, falsely swore a statutory declaration, made false allegations that Barry Catt had sexually assaulted his children, had wrongly cancelled insurance policies of Barry Catt and the children, had wrongly attempted to take over Barry Catt's business, had endeavoured to secure statements from alleged witnesses knowing they would be false and other matters. All of these issues and the evidence in relation to them were tendered, either at the trial, or, before Davidson ADCJ and his Honour has made findings, either in relation to them, or, with knowledge of the evidence.

171

The matters of general significance to which I have referred are of varying degrees of relevance to the appeals in relation to conviction on each count. In order to determine this appeal it is necessary to consider each matter separately.

Counts 1 and 2

172

A finding that the appellant was guilty of

count 1 would lead inevitably to a finding that she was guilty of count 2.

173

The Crown case at the trial on these counts depended on the evidence of Mr Catt, Mr Warwick and Mr Golds. At the private prosecution Mr Golds gave evidence in support of the appellant but changed his account of events by the time of her trial. He said that in giving the changed account at both the committal proceedings and at the trial he was aware that he could be charged with perjury. Mr Golds said he gave his first and incorrect version of events out of a fear that if he did not the appellant would carry out her threat that he would lose his job with the smash repair firm.

174

Evidence was given at the Section 12 hearing that Mr Golds had told Mr Bridges that he had changed his evidence because he was scared of Det Sgt Thomas and an alleged threat that he would be charged if he did not change his evidence. This evidence was available at the trial and there is no explanation as to why the issue was not raised and if necessary appropriate evidence called.

175

Mr Golds was not extended an immunity from prosecution for perjury nor given any other undertaking before giving evidence for the Crown.

176

Evidence for the defence was given at the trial by the Catt children - Christopher, Sharon and Julie. Each of them has recanted and now gives a version consistent with Mr Golds and with the account of Mr Catts and Mr Warwick. Accordingly, the only evidence to the contrary

of the Crown case is that of the appellant which the jury rejected at the trial. The present evidence of the Catt children is fresh evidence.

177

There is no doubt that the evidence admitted by Davidson ADCJ as to the method of operation of Det Sgt Thomas indicates a propensity in him to use improper methods of investigation. Although there is no fresh evidence that this occurred in relation particularly to Mr Golds, the evidence was available at the trial, there is significant fresh evidence which is consistent with that propensity, which is now available. To my mind, that fresh evidence is such that a jury may have taken a significantly more adverse view of Det Sgt Thomas' activities and of his influence on the evidence of witnesses called by the Crown.

178

In her Honour's summing up Mathews J dealt extensively with the evidence of Mr Golds. Her Honour cautioned the jury about accepting his evidence, he being in the position of an accomplice of the appellant. Furthermore, apart from his status as an accomplice her Honour drew attention to the fact that Mr Golds had changed his version of the events.

179

In relation to those matters her Honour said:

"I think that is all I need say except this, that quite apart from any status which Shane Golds might have as an accomplice, there is another reason for subjecting his evidence to special scrutiny, and it is simply this: that on his own version he has previously given an entirely different account, not only in his statement to Mr Hook, but much more significantly in sworn evidence in other court

proceedings. Where you have somebody who has got into the witness box and sworn on oath on a previous occasion to one version, and now swears on oath to another one, you must, of necessity, have some doubt as to which version is the correct one.

Well, of course, that brings me to his explanation for, first of all, giving his previous evidence and, secondly, changing it. As to what he did say then, I will go into this briefly only, because it has very limited use in this trial. And that, in turn, will go directly to the version of this incident given by Mrs Catt herself and the three children. Shane Golds, of course, said at that time precisely what you have in his statement made to Mr Hook and in the evidence which he gave in those proceedings. His explanation for what he now says was wrong at that time, was initially given in his examination in chief. He said that after the incident on 2 May, Roseanne Catt drove them all to the police station to report the matter, and then to a doctor's surgery where Roseanne Catt and Peter Bridge saw the doctor. On the way, the accused told them all that they were to say that Mary Warwick was abusive, and it was she who had hit Barry Catt over the head with the rock. He said that after being at the doctor's surgery they returned to Cornwall St to the main bedroom, and then he said, (page 770):
'Roseanne said to everyone, 'When you are going to give a statement to Teddy Hook,' and she said to put in the statement that it was Mary that hit Barry over the head with the rock; she went to hit me but I ducked and she hit Mary and that Mary was getting abusive at her.'

Shane Golds said that she said to him, 'If you don't tell the story the way I told you, you will lose your job.' He said that this threat was repeated a few times to him before 21 May when he gave that statement to Mr Hook.

Well, you have got that statement so I do not

need to remind you of it. It basically gives the same version that was given here by Mrs Catt and her witnesses. He was cross examined at length by Mr O'Loughlin about this previous statement, and the fact that it was part true and part lies, and about what parts of it he said Roseanne Catt had specifically prompted him to say and what parts had been his own invention. He said that in the latter category was the fact that Bary Catt had removed the keys from the ignition, and the comment that Mr O'Loughlin makes is that it is extraordinary that his invention is the same as her version. He was also cross examined about the fact that he was an apprentice, and that it would not be easy for his employment to be terminated, but he said he was still in fear for his job. He left his employment with Cattys Body Repairs in about October/November 1988. So, by the time he gave his evidence in July 1989 he could not have had any fears for his employment. His explanation for giving that evidence was that he was frightened of the accused. He said that back in late 1987, she had asked him if he had wanted money to kill Barry Catt, or if he knew anyone else who might, and that this had made him extremely apprehensive about her. Of course, he was cross examined that this was a sheer fabrication and that he had never mentioned it before.

He said that on the morning of that court case on 3 July 1989, they had all met at Roseanne Catt's home. She showed their statements to them and told them, 'Stick with this story and we'll be right. We'll win the case.' Hence it is that he went and gave that evidence as in exhibit 8.

Of course, he was cross examined before you about this; about the fact that on his own version, his own admission, he was at that time perjuring himself, although he did say here that when he gave his evidence then, he did not realise it was a criminal offence. He realises it now.

He was also cross examined that he never told anybody that he was giving a false version at Roseanne Catt's behest. He did not tell his girlfriend, Sonia, or any member of his family. Mr O'Loughlin referred to this yesterday, in a slightly misleading way, and I think I should put it right. Mr O'Loughlin said that Shane Golds had told his girlfriend, Sonia, Roseanne Catt's version of this incident. That is not the evidence before you. The evidence before you is a negative one, not a positive one. He did not tell her that he had been asked to lie. It is not that he gave the Roseanne Catt version, but he did not tell her that he had been asked to lie and that he had gone along with it.

In relation to those exhibits, eight and nine. I direct you again that they are not evidence of the facts set out therein. They are simply evidence of the fact that Shane Golds previously said something entirely different from what he has said here. They are not available to prove the truth of what they say, but simply to reflect seriously upon his credibility as a witness here before you. The same applies in relation to all prior statements of witnesses which have been tendered into evidence. I think I will say it once again - I have said it many times during the course of the trial, and I will say it now for the last time, and no longer continue to remind you: all prior statements of witnesses are allowed into evidence either for the purpose of attacking the credibility of the witness in the witness box, if the statement is tendered by the opposing party, or to bolster the credibility of the witness in the witness box which is being attacked under cross examination, if the statement is tendered by the party who called the witness. In each case the statement is only available for use as reflecting on the witness's credibility. You cannot look at it and say: this statement says A and B and therefore that is additional proof

of A and B. You cannot do that. You can only look at it as reflecting on what the witness said here.
Notwithstanding the warnings I gave you about Shane Golds, you may think that in one respect he was an important witness, because he was the only one who, as it were, has switched sides. The others have remained true to their original versions. So, a very important question - and you may think this is the importance of Shane Golds - why did he change sides? It seems that it happened in 1989. He was collected from work he said by Mr Thomas and Carl Paget and taken to Milligan St, and on the way Detective Sergeant Thomas, as he then was, said to him that they wanted to talk to him about Roseanne Catt and Barry Catt - that if he, Shane Golds, had been telling lies he could be charged with perjury. Shane Golds said that at that stage he wanted to get it off his chest, and so he told them the truth. Once there at the house at Chatham he said he made a statement which was typed out in which he told the true story. It was not until after he had done that, that he was shown Barry Catt's statement about the rock incident.

Well, if you were to accept that that was true, that he did not see Barry Catt's statement until after he had made his own, then that would be powerful confirmation of his version; because unless it had happened that way, he would not know of the fabricated version Barry Catt had made, if he had not yet seen his statement. But of course this in a sense depends on the credibility of Shane Golds and the police officers.

It was suggested to Shane Golds in his cross examination that he had been procured by the police to retract his earlier evidence through threats of being prosecuted for perjury if he did not; he denied this. He denied it entirely, and you must remember that, and it is something I must say to you as a general proposition. A suggestion which is put to a witness in cross-

examination but not accepted by that witness, is no evidence in support of the suggestion. It is not for counsel to make suggestions to witnesses and then tell you that a matter is evidence; it is for the witness to give evidence. If a suggestion is accepted by the witness, then it certainly becomes a positive matter of evidence, because it comes from the witness. But if a suggestion is made to any witness in cross examination and not accepted, then you really must ignore it. Forget it, because it is not evidence of anything. Absolutely no evidence of anything, and there has been you may think an enormous amount of material in this trial which falls into precisely that category. You must remember that warning; and, as I said, if you are in doubt on any part of it then please do not rely on memory; send back in and we will ensure that you are reminded of the precise evidence which has been given. Because these matters are too important for them to go according to just memories, after such a long time.

Shane Golds denied that he had been threatened of being prosecuted for perjury if he did not retract his statement. He said that both Mr Thomas and also the police prosecutor at Roseanne Catt's committal had both told him that he could yet be charged with perjury, notwithstanding that he gave the new version of events; and indeed that the Crown Prosecutor here in this trial, in these proceedings, also told him the same. Nevertheless he said that he wanted now to get it off his chest. He said, 'I done something wrong, why not admit it?' Well, of course, that is a matter for you."

180

In his report Davidson ADCJ dealt with the position as his Honour saw it in relation to the evidence in respect of counts 1 and 2 in the following terms:

"The Section 12 Hearing: The Factual Issues

The major body of evidence relating to the rock incident was given by the Catt children - Christopher, Sharon and Julie. Each of them completely recanted and the versions they now give are consistent with that now given by Mr Golds. This is also consistent with what I take to be implicit in the jury's verdict that the previous versions they had given were at the instigation of Ms Catt, hence the submission of the Crown that in relation to this and other charges it's strong case has become "overwhelming".

Conclusions as to Mr Shane Golds

The most important factual issue which arises for determination in relation to Counts 1 and 2 relates to what has emerged as fresh evidence as to Mr Thomas' alleged misconduct and alleged propensity as a serving police officer in the New South Wales Police and later as an insurance investigator, to bring improper and sometimes unlawful pressure to bear on potential witnesses. To what extent might this have affected the outcome of the deliberations of the jury as to Counts 1 and 2 had that evidence been given at the trial and particularly as to the revised version given by Mr Golds?

This may be thought to be a question for overall evaluation by the Court of Criminal Appeal in dealing with the "unreasonable and cannot be supported" ground of appeal.

If it is to be regarded as a matter for my determination as a "factual issue" I offer the following: On the one hand there is fresh evidence which not only supports the learned trial judge's observations to the jury as to Mr Thomas' lack of objectivity but which also tends to support the conclusion that he had a propensity to use, and inferentially may have used, improper methods to obtain evidence which may be false. I have already indicated my

conclusions as to this in the case o If it is to be regarded as a matter for my determination as a "factual issue" I offer the following: On the one hand there is fresh evidence which not only supports the learned trial judge's observations to the jury as to Mr Thomas' lack of objectivity but which also tends to support the conclusion that he had a propensity to use, and inferentially may have used, improper methods to obtain evidence which may be false. I have already indicated my conclusions as to this in the case of Ms Whalen (paras. 141-229); Mr Bracamonte and Ms Van der Merwe (paras. 639-662), and Ms Nagy and Ms Hart (paras. 672-688). There is also to be considered evidence of his employing the technique of the veiled threat sometimes in a half serious manner towards potential witnesses (see paras. 609-622). His alleged admissions to Mr Caesar (see paras. 403-419), particularly relating to the "planting" of a pistol on Ms Catt, is also inferentially relevant to the issue whether pressure may have been applied to Mr Golds as expressive of a "conviction by any means" attitude.
As against this, however, there is the direct evidence now given by the Catt children which is in substantial conformity with the later version of the rock incident given by Mr Golds.

Consistently with the approach which I have adopted, the fact that the version now given by the Catt children is essentially that reached by the jury, which necessarily involved a rejection beyond reasonable doubt of the pro Ms Catt versions previously given by the Catt children and on the basis that she had applied pressure to them, must weigh heavily in favour of the view that the Crown may rely on their evidence as to Counts 1 and 2, although from an otherwise unreliable source.

A similar set of conclusions may be reached as to the evidence of Mr Golds.

On the other hand, as to Mr Golds' evidence,

regard must be had to the limited range of other evidence which the jury had for consideration. There was not before them, for example, the evidence relating to the Bracamonte/Van der Merwe matter, of Ms Nagy, Ms Hart, Ms Cheers and Mr Caesar. The jury could not evaluate within that context the possible influence of Det Sgt Thomas upon Mr Golds when he was taken from his place of employment to 27 Milligan Street on 23 August 1989 and then emerged having given a version diametrically opposed to that to which he had deposed in the private prosecution of Mr Catt at the Taree Local Court.

Regard must also be had to whether pressure Mr Golds claimed to have had exerted on him by Ms Catt as at 3 July 1989 could have had any affect by the time he gave that evidence in the Local Court. On his own version, Ms Catt had not up until then put him in fear by asking him, in effect, if he wanted money to kill Mr Catt. Nor could his employment have been in jeopardy since he had already left the employment of Mr Catt when he gave evidence at the Local Court.

Another important consideration is that when he did give evidence at the trial of Roseanne Catt, Mr Golds had not been relieved from the pressure of a belief that he might still be prosecuted for perjury either by being previously dealt with or "no billed". Nor had he been given an immunity from prosecution or a "use" indemnity in respect of his evidence. According to his own evidence, he had been assured from a number of authoritative prosecution sources that he might still be prosecuted before he entered the witness box (as to this, see authorities cited at paras. 657-658). Another important consideration is that when he did give evidence at the trial of Roseanne Catt, Mr Golds had not been relieved from the pressure of a belief that he might still be prosecuted for perjury either by being previously dealt with or "no billed". Nor had

he been given an immunity from prosecution or a "use" indemnity in respect of his evidence. According to his own evidence, he had been assured from a number of authoritative prosecution sources that he might still be prosecuted before he entered the witness box (as to this, see authorities cited at paras. 657-658).
It might be said that even if improper pressure had been applied to Mr Golds, the harm was minimal since the ultimate version he gave is consistent with what is now an "overwhelming" case for the Crown. Achieving the "right" result, however, can scarcely be regarded as justifying seriously improper methods of investigation which might lead to untrue evidence (c/f Meissner v The Queen (1995) 184 CLR 132; R v Ireland (1970) 126 CLR 321, 335).

Her Honour gave to the jury an "accomplice" warning as to Mr Golds' evidence and a warning as to his previous inconsistent version on oath (S/U p18-19). No ground of appeal was taken in 1993 as to the adequacy of these warnings (c/f Davies and Cody v The King (1936-37) 57 CLR p183-5).

There is of course no way of knowing whether the jury accepted Mr Golds' evidence and if so to what extent. In light, however, of the rejection of the Catt children's evidence as it then was, I take the view that it is likely that the jury did accept Mr Golds as a completely reliable witness.

Mr Golds should now be regarded as an unreliable witness on the basis of fresh evidence, together with other evidence which was already before the jury, relating to the lack of objectivity of Det Sgt Thomas and his propensity to use improper methods of investigation. This supports the conclusion, which I draw, that there is a reasonable possibility that if that fresh evidence had been before the jury, they may have declined to accept Mr Golds' evidence."

181

Although the version of events which the jury accepted is now supported by the evidence of the children I do not believe this adds significantly to the strength of the Crown case. Leaving aside the children, when the jury considered whether the Crown case should be accepted, it necessarily had to form a view as to the credibility of the evidence given by the appellant and the evidence of Mr Golds. With respect to the appellant's evidence, whether or not she could be accepted, was likely to have been substantially influenced by the whole of the evidence relevant to her actions, including the allegations she made against Mr Catt, and the allegation of a conspiracy which she made against the police and lay prosecution witnesses. Those allegations are now supported by significant evidence which was not available at the trial.

182

The position in relation to Mr Golds is critical to the resolution of the appeal on counts 1 and 2. Although Mr Golds' recantation was apparently accepted by the jury the real question is whether the evidence which he gave at the trial would still be accepted having regard to the evidence which is now available with respect to Det Sgt Thomas' methods of operation. It is true that Mr Golds says that he was not influenced by Det Sgt Thomas, but, this would be inevitable, even if he had been influenced to give false evidence. This is to my mind, the essential question which only a jury could determine.

183

The appeal in relation to counts 1 and 2 should be upheld.

Count 3

184

The Crown case in relation to count 3 was dependent on the evidence of Barry Catt and a number of other persons with no apparent connection with either Mr or Ms Catt. Furthermore, there is nothing to suggest that the case presented by the Crown was influenced in any manner by the investigative method of Det Sgt Thomas. For these reasons Davidson ADCJ accepted the submission of the Crown that the Crown's case as to count 3 remained unaffected by any evidence given at the Section 12 hearing.

185

In my opinion, the Crown case on this count was strong. Nothing provided by way of evidence at the Section 12 hearing affects the credit of any Crown witness on this count. As Mathews J points out it is plain that having regard to the jury's verdict they accepted Barry Catt's evidence and that of the motel proprietor and completely rejected the appellant's version of the events.

186

To my mind, the position in relation to the third count ("the Swans Crossing Incident") is significantly different from the position in relation to the other counts. There is no suggestion that Det Sgt Thomas brought pressure to bear on any witness in relation to this incident. The evidence of Garry Jeffrey as to the actions of the appellant and Mr Catt following the incident, including their conversation, provides powerful support for Barry Catt's account of the relevant events. Furthermore, the evidence of the appellant's attempts to persuade Janet Eslick to support her account of the events of the previous evening is a strong indication that her account of the whole sequence of events could not be accepted. I am satisfied that, notwithstanding

the impact which the fresh evidence may otherwise have had on the credit of the appellant, there is no possibility that a jury would acquit on this count.

187

The appeal with respect to this count should be dismissed.

Count 4

188

The Crown case at the trial in relation to count 4 depended primarily on the evidence of Barry Catt together with evidence of telephone conversations which he had with others at about the time of the alleged assault. Critical to the Crown case was the allegation that the assault occurred on 5 May 1989, the alternative account being that the events were confined to the morning of the following day.

189

The evidence of Ms Jan O'Brien as to a conversation she had with Barry Catt in the evening of 5 May, which Barry Catt said triggered the incident, was also significant. Barry Catt's version was also supported by Mr French who he alleged he visited following the assault to avoid further incidents occurring.

190

Although the Crown case is now supported by the children who, gave a contrary version at the trial, which was rejected by the jury, I do not believe their evidence would add significantly to the weight of the Crown case.

191

There was no doubt that Mr Catt was injured above the eye. The defence case was that the

injury was self inflicted and Mr Catt's story concocted to escape any difficulties from the release of the eucalyptus oil. The jury rejected this proposition. Smart AJ has carried out a detailed analysis of that evidence in relation to this count [54]-[59] and emphasises the role which the evidence of Mrs O'Brien must have played in the jury's analysis of the evidence. Critical to that analysis is the fact that there is no suggestion that Mrs O'Brien's evidence was influenced by Det Sgt Thomas and accordingly the jury's finding should not be disturbed. The essential question for the jury in relation to count 4 was whether to accept the evidence of Mrs O'Brien and Mr Catt or whether the appellant's account was sufficiently credible to raise a relevant doubt. They resolved those matters by accepting the prosecution evidence.

192

I am satisfied that the analysis undertaken by Smart AJ is appropriate and notwithstanding the evidence which is now available a jury acting rationally could not entertain a reasonable doubt about the guilt of the appellant.

193

The appeal in relation to this count should be dismissed.

Count 5

194

I have previously discussed the findings made by Davidson ADCJ in relation to this count. [132 ff]

195

The Crown submits that a number of the factual findings made by his Honour are not correct and should not be accepted by this Court. In particular his Honour's findings as to the

number of times Mr Catt was prescribed Rivotril and the person who collected his drugs once prescribed is challenged. The Crown also draws attention to the fact that the charge brought against the appellant related to Lithium not Rivotril. The Crown had attempted to include "Lonezepan" (Rivotril) in the indictment but this was rejected by the trial judge.

196

The Crown also submits that it would be an error to rely, as his Honour did, on the evidence of Mr Fellow and Mr Caesar, both of whom it submits are not credible witnesses and further submits that the evidence of the Catt children given at the Section 12 hearing, which was contrary to the evidence which they gave at the trial, should be accepted.

197

The evidence relating to count 5 is complex. The Crown is of course, correct when emphasising that the count relates only to Lithium. However, the sequence of events with respect to Rivotril cannot be ignored when assessing the "credibility" of the sample in which Lithium was identified. If it was not likely that the appellant had access to Rivotril the finding of it in the sample is more likely to be explained by some one else contaminating the liquid.

198

The new version of events given by the children does not relate to the liquids tested by any laboratory. Even if their account is true and, as Davidson ADCJ finds it is difficult to accept, that evidence does not support the conclusion that the appellant had placed Lithium in Mr Catt's drink.

199

In relation to count 5 there is particular evidence which is fresh being that of Mr Fellows, Mr Caesar, Mr Cheers and that of Mr Newell given at the Section 12 hearing. The analysis which Davidson ADCJ makes of that evidence is clearly open and I am satisfied justifies a conclusion that the conviction with respect to count 5 should be quashed. As Davidson ADCJ demonstrates the basis upon which the jury could find that Mr Catt was responsible for the contaminated liquids, as opposed to anyone else, cannot now be supported. There is evidence which a jury could accept which could lead to the conclusion that the Crown had not negatived the possibility that Mr Newell, Det Sgt Thomas and Det Paget were all involved in a scheme to contaminate Mr Catt's drinks in a manner which implicated the appellant.

200

The appeal in relation to this count should be upheld.

Count 6

201

The Crown case in relation to this count depended on the evidence of Mr James Morris which, as to the events at the Taree RSL Club, was corroborated by Mrs Ridgeway, who is Mr Morris' sister.

202

The appellant denied that she had endeavoured to solicit Mr Morris and, although she accepted that she was at the Taree RSL Club on Friday 28 July 1981, she denied knowing Mr Morris or ever seeing him before he gave evidence at the trial.

203
The appellant's account of events at the RSL

Club was confirmed by Ms Lucy Parkinson who said that she knew both Mr Morris and Mr Ridgeway. She said she had seen Mr Morris that night "getting a bit boisterous" and "very full, very drunk." She also said Mr Ridgeway was "quite full" that night.

204

At the Section 12 hearing Ms Joy McGregor, who is the appellant's sister gave evidence. She said she was with the appellant at the RSL Club on the relevant evening and said she did not see the appellant speak to anyone such as Mr Morris. However, no explanation was given as to why Ms McGregor was not called at the trial. Her evidence is not admissible as fresh evidence.

205

Ms Parkinson was also called at the Section 12 hearing. Although she gave evidence at the trial she gave further evidence at the Section 12 hearing which Davidson ADCJ concluded had not been led at the trial as senior counsel "was clearly of the view that the substance of the ensuing conversations was inadmissible and did not attempt to lead it." I share his Honour's view of the matter.

206

The evidence of Ms Parkinson at the trial and at the Section 12 hearing is summarised by his Honour in the following terms:

"Ms Lucy Parkinson (Cooper)

Ms Parkinson was called to give evidence she had not given at the trial. She said that after having made a statement in about November 1989 to Mr Jones, solicitor for Ms Catt, as to the events at Taree RSL Club, Mr Vernon Taylor (Count 7) came to her house.

She said that she had previously known Mr Vernon Taylor's mother but not Mr Taylor. She said that he spoke to her about Mr Catt and offered the view that Ms Catt could not be trusted and was just a She said that she had previously known Mr Vernon Taylor's mother but not Mr Taylor. She said that he spoke to her about Mr Catt and offered the view that Ms Catt could not be trusted and was just a "blow in". He also mentioned another person, Mr Newell, who she had not heard of before.

She claimed that Mr Taylor said he was a messenger on behalf of Mr Catt and Mr Newell who wanted her to change the statement she had already made with particular reference to Ms Catt not having spoken to any person who might have been Mr Morris at the Taree RSL Club. Ms Parkinson said that she told him that she would give this some thought.

Ms Parkinson claimed that a few days later, Mr Taylor telephoned her and had visited her again and she told him that she had not had time to think about his request.
Some two to three days after that he rang again and she had told him that she knew what had happened that night because she was there. She said there was no further contact between them (H/T p2352-57)."

207

Davidson ADCJ asked the question as to whether Ms Parkinson's additional evidence could be accepted as fresh evidence. His Honour's discussion is as follows:

"Is Ms Lucy Parkinson's Additional Evidence Fresh?

Ms Parkinson said at the trial that she had been visited twice by Mr Taylor and had received a telephone call from him. Senior Counsel for Ms Catt, however, was clearly of the view that the substance of the ensuing

conversations was inadmissible and did not attempt to lead it (H.Ex 2.10; T/T p2544-5).

At the trial, Mr Catt does not appear to have been asked whether he knew or had attempted to have any contact made with Ms Parkinson through Mr Taylor or otherwise.

Mr Newell said that whilst he knew Mr Taylor he did not know Ms Parkinson. He denied that he had ever "gone with Vernon Taylor" to Ms Parkinson's house. The basis for this suggestion is not clear. Ms Parkinson never suggested that Mr Newell was present on either occasion on which Mr Taylor visited her.

Mr Taylor at the trial said that he had, at the request of Det Sgt Thomas and Det Paget, found Ms Parkinson and asked her whether she was prepared to make a statement and talk to the police. He said that he had told her the "whole story". He said he had reported to the police the result of his contact with Ms Parkinson. He said ultimately Ms Parkinson had said that she was prepared to make a statement but not favourable to the prosecution's case (H.Ex 2.6; T/T p2593-5).

Mr Thomas at the section 12 hearing said that he knew nothing about Mr Morris prior to the date of Mr Morris' statement of 5 September 1989. Mr Baggs, FACS Officer, said that he had received information from Mr Ferguson on 25 August 1989 of the alleged approach by Ms Catt to Mr Morris. Mr Baggs asserted that later on that same day he had so informed Det Sgt Thomas (H.Ex UUUU). Mr Thomas said, however, that he could not say what investigative process led him to Mr Morris as a prospective witness (H/T p371). He denied that he had offered Mr Morris any sort of assistance or protection if Mr Morris gave evidence against Ms Catt (H/T p372).

The evidence does not disclose how either Mr Catt, Mr Newell and/or Det Sgt Thomas or Det

Paget came to know of the existence and general purport of a statement made by Ms Parkinson to the solicitor for Ms Catt in a pending criminal proceeding against his client involving serious criminal charges.

208

Davidson ADCJ refers to Mr Ferguson, a FACS officer as being the person who first received information from Mr Jimmy Morris of the alleged approach by Ms Catt. There is a reference to this fact in a summary of the history of the Department of Family and Community Services involvement in the problems of the Catt family. The relevant entry is:

"At about 11.30 am on 25.8.88, Bill Ferguson DO revealed to me that the Aboriginal Police Liaison Officer, Jimmy Morris, had allegedly disclosed to him that Roseanne Catt had offered money for Morris to kill Barry Catt. I told Ferguson that he should have revealed this information to the Police earlier than that time and told him that I would do so."

209

If this "evidence" is admissible and was accepted, and there would seem no reason why it should not be, it may follow that Det Sgt Thomas was not responsible for, or the source of, the allegations made by Mr Morris.

210

Davidson ADCJ also records the evidence which his Honour received as to allegations of the involvement of Mr Morris in sexual activities with under age aboriginal girls. The suggestion which has been made is that because of these allegations and, upon the assumption that Det Sgt Thomas knew of them, Det Sgt Thomas put pressure on Mr Morris to give false evidence against the appellant.

211

Davidson ADCJ discussed the relevant evidence in the following terms:

"MR JAMES MORRIS AND ALLEGATIONS RELATING TO UNDER-AGE ABORIGINAL GIRLS

Mr Gregory Baggs and H.Ex OOOOO

H.Ex OOOOO is a report by Mr Baggs of FACS dated 22 September 1989 to his Regional Head Office. It recites a report by two officers, one of whom is Mr Ferguson, to the effect that "a number of thirteen to fifteen year old Aboriginal girls had been involved in sexual intercourse with Jimmy Morris, Aboriginal Police Liaison Officer (Taree), and that also involved were a number of Taree policemen. It was alleged that Mr Morris did this during late shifts in his job".

The report then states that Mr Morris' wife had left him some three months previously on discovering what he was (allegedly) doing. It is then recited that "many people in the Purfleet (Aboriginal) Community were aware of this" including, so it is reported, Mr Ferguson.

Mr Baggs reports that he had sent Mr Ferguson to obtain the names of one of the girls involved, and Mr Ferguson had returned with two statements, not in evidence but apparently tending to confirm the allegations.

The report recites that the matter had been drawn to the attention of Police Internal Affairs Branch which had investigated and concluded "there appears to be substance to the disclosures of these Aboriginal girls".

H.Ex OOOOO then cites two matters as appearing "to link". One is the visit by Ms Whalen to the offices of FACS on Tuesday, 19 September 1989 in which she is said to have "disclosed her treatment by Det Peter Thomas when questioned

about the Catt case". The second, "Jimmy Morris is a witness for the police in the charges against Ms Catt".

Mr Baggs said that the FACS investigation of allegations of sexual abuse of under-age Aboriginal girls had been made by an Area Supervisor, Mr Ford (not called).

H.Ex OOOOO states the name of one of the two girls, described as "workers", from whom Mr Ferguson had obtained a statement. H.Ex OOOOO seems to take the form of an official notification by Mr Baggs to his superior officer, Mr Madden, on 22 September 1989 as to that named child.

H.Ex OOOOO states that the Police Internal Affairs investigation was "meant to be 'hush hush'". Neither the result of Mr Ford's investigation nor the Police Internal Affairs investigation was before me at the section 12 hearing.

According to Mr Baggs, although it involved allegations of criminality as to at least one child, the matter was left to be dealt with by members of the Purfleet Aboriginal Community rather than by the police or FACS.

DID DET SGT THOMAS AND/OR DET PAGET KNOW OF THE FACTS ASSERTED IN H.EX OOOOO AS AT 5 SEPTEMBER 1989?

Objection was taken to the admission of H.Ex OOOOO by the Crown on the basis that there was no evidence that either Det Sgt Thomas or Det Paget had been aware of the allegations regarding Aboriginal children prior to the date of Mr Morris' statement of 5 September 1989. I overruled this objection on the basis that H.Ex OOOOO contains an assertion that these allegations had been aired since June-July 1989, and this went to whether there is an inference open that Det Sgt Thomas and/or Det Paget are likely to have been aware of the

allegations, particularly in light of the fact that some police stationed at Taree are alleged to have been involved.

Mr Thomas denied at the section 12 hearing ever having seen Mr Baggs' report of 22 September 1989 (H.Ex OOOOO) or having any recollection of having then been aware of these allegations. He said that he had only been made aware of them recently but had no recollection of what his state of knowledge was as to them in 1989, and in particular what it was before and at the date of the statement of Mr Morris dated 5 September 1989 which is witnessed by Det Paget (H.Ex YY).
Det Paget said that as at 5 September 1989, the date he appears to have witnessed Mr Morris' statement, Mr Morris was not to his knowledge being investigated by police in relation to the allegations in H.Ex OOOOO. Det Paget said he knew nothing about that (H/T p575-6). Det Paget said that as at 5 September 1989, the date he appears to have witnessed Mr Morris' statement, Mr Morris was not to his knowledge being investigated by police in relation to the allegations in H.Ex OOOOO. Det Paget said he knew nothing about that (H/T p575-6).

Mr Baggs said that when on 25 August 1989 he had informed Det Sgt Thomas about Mr Ferguson's information disclosing the soliciting of Mr Morris by Ms Catt, he could not recall if he was then aware of the allegations as to the Aboriginal children. Mr Baggs said that he got no indication from the police that they were aware of the allegations at that time (H/T p2127).

According to H.Ex OOOOO, it was on 20 September 1989 that Mr Ferguson and another departmental officer, Mr Davis (not called), advised Mr Baggs of the allegations. It also appears from H.Ex OOOOO that it was not until some time between the date of that document being faxed to Mr Baggs' superior, Mr Madden, and about one week previously that senior police outside

Taree were informed of the allegations. H.Ex OOOOO states that the head Aboriginal Police Liaison Officer at Hornsby had been informed and he in turn had advised his Chief Inspector. It was not until after this it would seem that the "hush hush" investigation by Police Internal Affairs commenced.

This history indicates that it was not until after Mr Morris had made his statement of 5 September 1989 that senior police at Hornsby were officially notified on a confidential basis of the allegations involving children from the Purfleet Aboriginal Community.

H.Ex OOOOO, however, makes it clear that the allegations were being made known on an unofficial basis some three months prior to September 1989. They came to the notice of Mr Morris' wife and members of the Purfleet Aboriginal Community. There is an available inference that police officers stationed at Taree were also likely to have known, at least in general terms, of these allegations particularly as they were said to involve local police from Taree.

The question remains whether it is reasonable to infer that the allegations were likely to have come to the ears of Det Sgt Thomas and/or Det Paget who were not formally stationed at Taree.

In an interview with police assisting the Crown at the section 12 hearing, Mr Ferguson denied that he was said to have been involved in the sexual activities alleged. He asserts that Mr Morris was alleged to have been involved but says "it never came to DOCS" (H.Ex 39, Q&A 49-57; verified in the witness box H/T p1975). H.Ex 39 does not indicate when Mr Ferguson came to know of the allegations and in evidence he said that he was not sure when he came to know of Mr Morris' alleged involvement in what was described by Mr Ferguson as a "prostitution ring". Whenever it was it must have been on or

prior to 20 September 1989, the date of H.Ex OOOOO.

Mr Ferguson denied that in about August or September 1989 Mr Morris had made any confession to him about the matter. He also denied, however, that he had been told by Mr Morris of the soliciting of him by Ms Catt to murder Mr Catt (H/T p1983, 1988). I do not accept this in light of Mr Baggs' report, H.Ex UUUU, where at paragraph 38 he states that it was on 25 August 1989 that Mr Ferguson told him of Mr Morris' allegation.

Mr Morris in effect denied that Mr Ferguson had asked him to make a statement to the police about the soliciting as a way of getting both him and Mr Ferguson out of difficulties in relation to allegations about under-age Aboriginal girls (H/T p1208).

212

Davidson ADCJ expressed the following conclusions in relation to count 6:

"CONCLUSIONS AS TO COUNT 6

Ms Joy McGregor

As to Ms McGregor, although her evidence is clearly material, no satisfactory reason has been suggested to me to explain why she was not called at the trial. On the evidence before me she was available but notwithstanding the apparent importance of what she had to say particularly in relation to the alleged soliciting by Mr Morris, no statement was taken from her. This and her close relationship to Ms Catt brings me to the view that her evidence lacks sufficient cogency to be regarded as fresh.

Ms Lucy Parkinson

As to Ms Parkinson, it was the decision of

senior counsel at the trial not to adduce the details of the conversation which she says that she had with Mr Vernon Taylor.

Whatever the validity of senior counsel's view, the evidence given by Mr Taylor that he had reported back to Det Sgt Thomas and Det Paget the end result of his conversations with Ms Parkinson, made the terms of the conversation admissible and relevant as some evidence going to the allegation of c Whatever the validity of senior counsel's view, the evidence given by Mr Taylor that he had reported back to Det Sgt Thomas and Det Paget the end result of his conversations with Ms Parkinson, made the terms of the conversation admissible and relevant as some evidence going to the allegation of collusion between one of these two police officers, Mr Newell and/or Mr Catt.

So viewed, however, the evidence does not go to the question whether there may have been any miscarriage of justice specifically in respect of Count 6.

Allegations as to Under-Age Aboriginal Girls

As to whether pressure may have been brought to bear on Mr Morris by reason of his alleged involvement in serious sexual offences relating to Aboriginal children, there is no direct evidence to establish that either Det Sgt Thomas or Det Paget was aware of these allegations before Mr Morris made his formal statement to the police, H.Ex YY, on 5 September 1989. Such direct evidence as was given suggests that the contrary may be true.

The circumstances, however, raise in my mind a degree of unease as to whether this may have been so. It would be extraordinary if, in a township the size of Taree, allegations of this kind, abroad some three months or so prior to September 1989 involving police officers at Taree Police Station, did not come to the ears of Det Sgt Thomas and/or Det Paget before 5 September 1989 while they were working in

Taree.

If they did know, then it may have been within the modus operandi of Det Sgt Thomas to have "softened up", Mr Morris, directly or indirectly, into co-operating in making a case against Ms Catt and by agreeing to give false evidence.

Against this is the sworn evidence of Mr Morris and Ms Ridgeway. If Mr Morris and Ms Ridgeway were persuaded that co-operation with police might help to keep Mr Morris out of trouble in this regard, then Ms Ridgeway may well have assisted her brother.

Having considered the evidence against the background of other material relating to Det Sgt Thomas' methods of investigation, I am unable to determine whether it is likely that Det Sgt Thomas and/or Det Paget may have known of the allegations and Mr Morris' alleged involvement on or before 5 September 1989 when a statement was taken from Mr Morris.

213

There are difficulties in the resolution of the appeal in respect of this count. Although there is evidence of difficulties for Mr Morris with respect to allegations of organised prostitution, there is no evidence that Det Sgt Thomas was the initial source of Mr Morris' complaint with respect to the appellant's alleged attempt to engage him to kill Mr Catt. However, I share Davidson ADCJ's view that it would be unlikely that Det Sgt Thomas did not know of the allegations with respect to Mr Morris. The apparent propensity for Det Sgt Thomas to place improper pressure on witnesses and his apparent hostility towards the appellant, would make a submission that Mr Morris' evidence had been tainted by Det Sgt Thomas credible. However, even with the benefit of the evidence received by Davidson ADCJ it could not be concluded that such pressure was

in fact imposed on Mr Morris.

214
Notwithstanding these matters, I am satisfied that this ground of appeal should be upheld. The Crown case depends upon the evidence of Mr Morris who says that, although he had never previously met the appellant, she nevertheless solicited him to kill her husband.

215

To my mind, although the alleged behaviour of the appellant is possible, it would not be a likely course for someone intent on killing another to approach a complete stranger in a public place and ask them to carry out the deed. I am also troubled by the delay in Mr Morris reporting the matter and the fact that this is only said to have occurred following his conversation with Mr Ferguson of FACS and Mr Ferguson's relaying of the allegation to another FACS officer.

216

All of the possible difficulties in his evidence were before the jury to evaluate and weigh against the denial by the appellant. However, the credibility of the appellant, and hence whether her denial gave rise to a reasonable doubt in the mind of the jury, was required to be determined having regard to the evidence on the other counts especially count 5 (lithium) and count 9 (the pistol). Having regard to the evidence which is now available in relation to these counts, which is such that, in my opinion, the conviction on those counts should be quashed, it would be open to a jury to come to a different view of the credit of the evidence in relation to count 6.

217

In these circumstances and with respect to those who may have a different view, I am

satisfied that the appellant lost the chance of an acquittal on this count and the appeal should be upheld.

Count 7

218

Davidson ADCJ summarises the evidence in relation to this count at the trial and the Section 12 hearing and concludes that nothing has been demonstrated to suggest "a miscarriage of justice specifically in relation to count 7." His Honour's discussion is as follows:

THE TRIAL

The Crown alleged that between 15 July and 16 August 1989 Ms Catt solicited Mr Vernon Taylor to murder Mr Catt.

Mr Vernon Taylor

Mr Taylor said that he had known Mr Catt since childhood. He met Ms Catt in March/April 1988. Some six months later Ms Catt told him that a rift was developing between her and Mr Catt. He said she drove a white Corvette motor vehicle and he had expressed some interest in taking photographs of it, and she had invited him to do so at the office and workshop at 2-8 Cornwall Street.

Mr Taylor said he had gone a number of times to 2-8 Cornwall Street for that purpose and during the course of these visits, Ms Catt had informed him that Mr Catt was sexually assaulting his children.

Mr Taylor said that he was a professional kangaroo shooter. He said that Ms Catt had asked him whether he was any good with guns and he had told her of his professional interest in them.

He said that, "probably" in August 1989, in the

office at 2-8 Cornwall Street, Ms Catt had asked him if he would "do a job for her". She said that she wanted Mr Taylor to "bump him off". He said that he had assumed she was referring to Mr Catt because of the derogatory manner in which she had previously spoken of Mr Catt.

Mr Taylor said that Ms Catt had gone on to say that she wanted to get Mr Catt "out of the road" and it was worth $20,000 to him. He said he had previously indicated that he owed $18,000 on his house (H.Ex 2.6; T/T p2558-62).

Mr Taylor said that he returned to 2-8 Cornwall Street during the following week, and that Ms Catt asked him on this occasion whether he had thought about "bumping him off for her". She told him the offer still stood. He claimed that she said that Mr Catt had been "hassling her and the kids and she just wanted him out of the road and she said the $20,000 was there" if he wanted it. Mr Taylor said that at one stage he had told her that he would like to have the money.

About three weeks later at about 6.45pm, at the invitation of Ms Catt, Mr Taylor said that he went to 1 Cornwall Street. He was invited into the house and sat with Sharon Catt playing noughts and crosses. Ms Catt asked him about getting her a handgun and he said that he had told her that he would do so. She said that she wanted to fit a handgun into her handbag and that she did not want to "wing" him, "I just want to blow him away. If he comes near this place or comes near the kids I just want to kill the bastard". She told him that if he went to the police as to these approaches by her to him, she would know about it because she said, "I've got a lot of friends up there and they will do anything for me" (H.Ex 2.6; T/T p2563-4).

Mr Taylor said that he had been asked to make a statement about the matter by Mr Newell and he had done so on 20 August 1989 at his house at

Wingham after Mr Newell, Det Sgt Thomas and Det Paget had arrived there with a typewriter.

Mr Taylor was cross-examined on the basis that he had visited Ms Catt frequently because he was "sweet" on her. He denied the suggestion that he may have had the motivation of a spurned lover to concoct lies to implicate her. Her Honour in summing up reminded the jury of this (S/U p81).

Ms Roseanne Catt

Ms Catt said that Mr Taylor did come to Cornwall Street to visit Mr Catt but never to visit her. She denied having spoken to him about guns or asking him whether he knew about guns. She denied asking him to "do a job" for her as alleged by Mr Taylor. She said that one evening he had come to her house at 1 Cornwall Street looking for Mr Catt and she had told him he was not there and that Mr Catt lived across the road at the office (H.Ex 2.9; T/T p2712-4).

Ms Catt's attention was drawn to a passage of evidence she had given at the trial of Mr Catt on the sexual assault charges. She agreed that she had there said that Mr Taylor came to 1 Cornwall Street looking for Mr Catt on one occasion. She had been in the shower and had been told by one of the children that Mr Taylor was at the house. She had said that she would come out and that she thought that whilst Mr Taylor was waiting for her to do so he had played noughts and crosses with one of the children (H.Ex 2.9; T/T p3027-8).

The Catt Children: Christopher, Sharon and Julie

Christopher Catt said in cross-examination that he had seen Mr Taylor on occasions talking to Mr Catt but had never seen him talking to Ms Catt (H.Ex 2.8; T/T p3582).

Sharon Catt said that she knew of Mr Taylor but

had never met him (H.Ex 2.8; T/T p3096). In cross-examination, however, she said she had seen Mr Taylor coming out of the workshop. She understood that he was a friend of Mr Catt's.

She said she could not remember him coming to see Ms Catt in the afternoons but she did remember one night when he had played noughts and crosses with her when Mr Taylor had come looking for Mr Catt and whilst Ms Catt was in the shower. She said that all the Catt children had been present at 1 Cornwall Street when this had occurred. She denied that there was any discussion about guns at any stage (H.Ex 2.8; T/T p3188-9).

Julie Catt does not seem to have been asked about Mr Taylor at the trial.

THE SECTION 12 HEARING

The Catt Children: Christopher, Sharon and Julie

The outstanding body of fresh evidence once again came from three of the four Catt children - Christopher, Sharon and Julie. All three now gave direct evidence supporting the Crown's case.

Christopher Catt in a statement dated 25 March 1993 annexed to and verified by his affidavit of that date, states that he did not know Mr Taylor very well, only as one of Mr Catt's friends.

One night, however, in July or August 1989 he recalled coming home and seeing Mr Taylor at 1 Cornwall Street playing noughts and crosses with Julie (not Sharon) whilst "Roseanne was out the back".

He states that Ms Catt came in and there was conversation between her and Mr Taylor in which Christopher Catt said he overheard the words "I'd like to see him dead". He said that he did

not overhear all of the conversation (H.Ex 22). He states that Ms Catt came in and there was conversation between her and Mr Taylor in which Christopher Catt said he overheard the words "I'd like to see him dead". He said that he did not overhear all of the conversation (H.Ex 22).

In his statement to the police assisting the Crown in the presentation of its case in the section 12 hearing in January 2003, Christopher Catt gave a yet more expansive account of events on that night. He said that Mr Taylor had been to the gym or was waiting to go to the gym. Christopher Catt then states that he did not think he had told anyone this before but he had overheard Ms Catt saying to Mr Taylor, "Well, I want you to kill him, there's 20 grand if you do it". He said he thought that Sharon and Julie were there as well.

Christopher Catt said that he had been sitting on the floor watching television when these words were spoken. He said that "from memory" he did not think she discussed how she wanted it to happen, she was just enquiring to see if Mr Taylor would be interested. He repeated that no-one had ever asked him about this incident with Mr Taylor before nor had he ever spoken about it to police or anyone else (H.Ex 21, Q&A 184-204).
Christopher Catt confirmed in evidence the truth of what he had deposed in the 1993 affidavit and the January 2003 interview. He was asked in cross-examination about the passage in the 1993 version in which he had said that he was not there for the entire conversation but before leaving he had heard Ms Catt say to Mr Vernon Taylor, "I would like to see him dead". He explained that he had cut that short "cos I didn't want to tell them the rest of what I had heard".

He said that in 1993 from the time they had been living at Ms Dawn Lawson's place he had not wanted to talk about these matters and what he said in 1993 was "the quickest way out, so I

didn't have to talk about it". He said the quickest way "to get it out, to answer it was to say I was not there". He said he had told a lie when in H.Ex 22, Q&A 17 he had said that he was not there for the entire conversation, "I went to my bedroom out the back" (H/T p1373-6).

Sharon Catt in her 1993 affidavit, when asked about the evidence she had given at Ms Catt's trial in relation to Mr Taylor, deposed that at the trial she said she played noughts and crosses with him on the front porch but that was not completely true - they had also played noughts and crosses in the lounge room (see annexed statement of 22 March 1993 at page 10).

In a further statement of 24 March 1993, she was asked about "an incident involving Vernon Taylor which occurred in July or August 1989 at Taree". She stated that she recalled playing noughts and crosses with Mr Taylor whilst waiting for Ms Catt to come out of the shower. Sharon Catt said that when Ms Catt and Mr Taylor were sitting on the lounge she heard Ms Catt say to Mr Taylor, "Do you have any experience with guns". He responded, "I've gone rabbit shooting when I was younger" or "something like that".

Ms Catt asked, according to Sharon Catt, whether Mr Taylor knew how she could get "a little pistol for my handbag". Sharon Catt said that Ms Catt said, "Will you do a job for me? I'll pay you" and mentioned a large amount of money. She thought it was around $20,000 but was not sure. She said she was not sure who else was there when this conversation took place. She said, "Roseanne had told me to say that the conversation never happened. That is what I did, but it was actually true". Part of the evidence of Sharon Catt at the trial was that there was no discussion between Ms Catt and Mr Taylor about guns at any stage (H.Ex 2.8 p3188-9).
In her pre-section 12 hearing interview in January 2003, Sharon Catt repeated

substantially what she had told the police officer interviewing her in 1993 (H.Ex 27, Q&A 234-7).

Apart from confirming what she had said in 1993 and in January 2003, Sharon Catt was not extensively questioned at the section 12 hearing as to her evidence in relation to Mr Taylor. She confirmed that it was her recollection that there was a conversation between Ms Catt and Mr Taylor in which Mr Taylor had said that he had experience with guns in shooting rabbits (H/T p1458).

Julie Catt in her pre-section 12 hearing interview spoke of Ms Catt saying "sort of in a joking way" in the lounge room at 2 (sic) Cornwall Street when she was playing noughts and crosses "how she wanted to sort of knock Barry - dad off". She continued, "I don't know whether she was sort of asking him about buying a gun or whether he was going to be the guy who was going to knock him off or what the scenario there was...." (H.Ex 18, Q&A 58).

In evidence she was asked whether she had ever told anyone about the incident and she said, "Well when I was at Aunty Dawn's that's when everything was found that - that we were lying" (H/T p1251).

Mr Andrew Connolly

Mr Connolly was not called as a witness at the trial. On the same day that Mr Taylor gave a statement, 20 August 1989, he also gave one. The signature in each case was witnessed by Det Sgt Thomas (see H.Ex NN).

Mr Connolly gave in evidence that on Tuesday, 17 August 1989, he had met Mr Taylor in the street in Taree. He said that during their conversation Mr Taylor told him about a conversation he had with Ms Catt involving a proposal that she had put to Mr Taylor for the payment of money.

Mr Connolly was also spoken to by police assisting the Crown in the presentation of its case at the section 12 hearing. He said that the part of his statement of 20 August 1989 which indicated that he had passed the information which he had got from Mr Taylor on 17 August 1989 to Mr Catt was in error and that he had in fact told Mr Frakes, solicitor then acting for Mr Catt. He said after that Det Sgt Thomas came to see him.

Mr Martin, then of counsel for Ms Catt, was critical of the Crown at the section 12 hearing in not calling Mr Connolly at the trial. I can see no basis for this criticism although he might conceivably have been called in an attempt to rebut a suggestion of recent invention put to Mr Taylor. His account, however, was not a necessary part of the narrative of events on which the Crown relied and I am unable to see how he might have assisted Ms Catt's case."

The conclusion of Davidson ADCJ in relation to count 7
219

In relation to count 7 Davidson ADCJ reached the following conclusions:

"The evidence now given by the Catt children does not fall within the category of matters in which, on my reading of the Summing Up, the jury must necessarily have concluded that the children were lying and had done so at the instigation of Ms Catt. Whilst this conclusion might have been open in relation to the evidence of Sharon Catt, the evidence of Christopher Catt was negligible in the Crown's case at trial on this count, and Julie Catt's less so.

There is, therefore, no jury finding implicit in the verdict which might present an obstacle to disregarding the evidence of the children.

Even, however, when their evidence is disregarded, or rejected as it was by the jury on other issues, it was open to the jury to accept the evidence of Mr Vernon Taylor as establishing the Crown's case. It is likely that the verdict on this count depended on the view the jury took of him as a witness.

The only matter about which I have misgivings in relation to the evidence of Mr Taylor at the trial is that the jury did not have the evidence of Ms Parkinson as to what Mr Taylor said to her on the issue of alleged collusion. They did have, however, the fact of the conversations and that he had reported back to Det Sgt Thomas and Det Paget. There is nothing in the evidence of what was said to her by Mr Taylor which suggests to me that the verdict as to Count 7 might have been different if the substance of the conversations had been before the jury. There is no indication on the evidence that there was any basis, such as there might have been with Mr Morris, for the application of pressure on him to give a false account.

Nothing presented at the section 12 hearing raises concern that there may have been a miscarriage of justice specifically in relation to Count 7.

Mr Connolly's evidence indicates a clear line of information moving from Mr Taylor to himself, to Mr Frakes and then to Det Sgt Thomas. I do not regard failure by the Crown to call him at the trial as involving impropriety.
"

220

Davidson ADCJ's finding that the jury's conclusion on this count depended upon the evidence of Mr Taylor was appropriate. Mr Taylor's other involvement with the case, of which Mr Parkinson gave evidence at the Section

12 hearing, was not before the jury. Although there is no suggestion in that evidence that Det Sgt Thomas pressured Mr Taylor to give false evidence, the association between Mr Taylor and Det Sgt Thomas and Det Paget, and the efforts allegedly made by Mr Taylor to have Mrs Parkinson change her account, to my mind, could be significant in any view which the jury formed of Mr Taylor. If the evidence in relation to Det Sgt Thomas' activities, of particular relevance to counts 5 and 9, and otherwise of general relevance as indicating Det Sgt Thomas' approach to investigation, was accepted, a jury's conclusion in relation to the evidence of Mr Taylor, but more particularly the evidence of the appellant on this count, may be different to that formed by the jury at the trial.

221

The evidence which is now available could lead to the conclusion that Mr Taylor was, to some extent, a participant in the efforts of others to secure a conviction of the appellant on various of the charges. It is true that the evidence on this charge is not given by Det Sgt Thomas but his possible influence on the investigation, and the evidence given by others, could not be ignored by a jury. Although the trial judge pointed out to the jury that the Crown case was not dependent on the credibility of Mr Peter Thomas and that, apart from count 9 all the material witnesses were not police witnesses, the evidence which is now available calls for a far more critical examination of the role of Det Sgt Thomas and the influence which he may have imposed upon the evidence of others.

222

The appellant's case at the trial was that Det Sgt Thomas had conspired with others to fabricate the case against her. It is plain that the jury did not accept this proposition,

which on the evidence then available could not be criticised. However, the evidence of the role of Det Sgt Thomas and his method of investigation is significantly different to that which was available at the trial. In these circumstances I am persuaded that in relation to count 7 the appellant lost a real possibility of an acquittal which should be corrected by this Court.

Count 9 - the pistol

223

I have previously related Davidson ADCJ's findings in relation to count 9. These findings include fresh evidence implicating Det Sgt Thomas in the creation of evidence by putting the revolver in the drawer where it was found by Const Cottee in order to incriminate the appellant. There is evidence that Det Sgt Thomas had reason to dislike the appellant.

224

There can be no doubt that a jury acting rationally could, having regard to the fresh evidence, entertain a reasonable doubt about the guilt of the appellant on this count.

Ground 1(b)

225

It is unnecessary having regard to the conclusion I have otherwise reached to further consider ground of appeal 1(b). In any event I would not uphold the appeal on this ground.

226

Although the fact that all the counts were heard together is relevant to an understanding of the significance of the fresh evidence in the resolution of the appeal in relation to the individual counts, the decision to have all

counts tried together was not questioned by the defence either at the trial or in the original appeal. Although the issue had been raised early in the trial defence counsel informed the court that the appellant did not wish to pursue any application to have any of the charges severed.

227

The appellant was represented by experienced counsel at the trial and on the appeal. Throughout the trial the defence case was that the appellant "was the innocent victim of a monstrous conspiracy." Her Honour reflected this case in the directions she gave the jury as can be seen in the following extracts:

"The first matter is, was there lithium in those liquids before Adrian Newell removed them from the refrigerator? And this involves the whole question of whether there was a conspiracy, as the defence alleges, between Barry Catt, Peter Thomas and possibly Adrian Newell to turn the tables as it were on Roseanne Catt. This is not only an important matter in the trial, but it is also most important, indeed crucial for this charge.'

228

In directing the jury further on this issue her Honour referred to the appellant's contention that there had been, and there was, a conspiracy in relation to the laying of the charges and the subsequent proceedings of the matters. Her Honour made the following observations:

"... Adrian Newell and Peter Thomas, one or both of whom according to the defence case was involved in a conspiracy with Barry Catt to charge Roseanne Catt with trumped up criminal charges, this question raises the whole issue of the involvement of those two people in this trial and the lead up to the trial, and the question of police propriety in the manner in

which Roseanne Catt was arrested, charged and generally dealt with on 24 August 1989 and afterwards.

The weak link, according to the defence case, is that these liquids went through the hands of both Peter Thomas and Adrian Newell, either one or both of them, according to the defence case, was at that time deliberately conspiring with Barry Catt to turn the tables on Roseanne Catt and to falsely manufacture criminal charges against her in order to get Barry Catt off the hook on the court proceedings which he was then facing and which he appeared to be losing.

The person against whom the allegations were primarily made was Detective Sergeant Peter Thomas as he then was, the allegation being that this whole trial is a travesty, the result of a monstrous collaboration between Barry Catt and himself, possibly involving Adrian Newell, to mount a number of false charges against this innocent woman for the purpose of getting Barry Catt out of the court cases which he was then getting the worst of.

All this material is important in the sense that the defence says that all these charges are the result of this conspiracy between Peter Thomas and Barry Catt, and maybe Adrian Newell, to get Barry Catt off the cases that he was then getting the worse of."
229

At the end of her Honour's summing up defence counsel asserted a conspiracy in relation to every count in the following terms:

"... in relation to Mr Thomas credibility I would ask you to remind the jury that the defence case in relation to the conspiracy was that her involvement in the matter extends to every count on the indictment ... ."

230

It is fundamental to the administration of our justice system that parties, including accused in a criminal trial be free to make their own choice between the available forensic options. Unless the decision which is made is one that was not reasonably open and thereby the accused has been denied the chance of acquittal an appeal court cannot intervene (see Suresh v The Queen (1998) 72 ALJR 769; Doggett v The Queen (2001) 208 CLR 343; TKWJ v The Queen (2002) 212 CLR 124). In the present case the decision to have all counts tried together was reasonably open to the defence.

The appropriate orders

231

In these circumstances it is necessary to identify the orders which are appropriate. Smart AJ has considered the relevant principles which I gratefully adopt.

232

I have come to the conclusion that the appeal in relation to counts 3 and 4 should be dismissed and the appeals in relation to counts 1, 2, 5, 6, 7 and 9 upheld.

233

With respect to count 9 (unlicensed pistol) the sentence has already been served and an order for a new trial would not be appropriate. A verdict of acquittal should be entered.

234

However, with respect to the other matters the charges are serious and although I am satisfied the convictions should be quashed it is a matter for the Director of Public Prosecutions, and not this Court, to determine whether a new trial should take place. Although there is undoubtedly significant reasons why a new trial

may be appropriate, not the least of which is to ensure that when significant charges are brought they are determined according to law, this must be balanced with the fact that fresh trials would occasion significant expense and it would be unlikely that any further term of imprisonment would be required to be served, even if convictions were entered on all charges. The appellant was released on bail on 6 August 2001, just over four months before her release on parole was due on 10 December 2001.