Part 10 - The allegation of conspiracy and count 5

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The preceding discussion provides the background to Mr Newell's involvement. Davidson ADCJ considered the evidence in relation to counts 5 and 9 in the context of the allegation by the defence that the case against the appellant was false and created from a conspiracy involving a number of persons including Det Sgt Thomas and Mr Newell. The first count considered was count 5 which relates to the administering of various drugs to Mr Catt. His Honour's discussion is in the following terms commencing with an account of the drugs prescribed for Mr Catt by medical practitioners:

"LITHIUM / RIVOTRIL AND MR BARRY CATT

Dr Aguado

The first specialist medical practitioner who prescribed Lithium for Mr Catt was Dr Aguado who, as a trainee psychiatrist, saw Mr Catt following his committal to a hospital in Watt Street, Newcastle on a schedule completed by Dr Richardson, psychiatrist, on 25 August 1987.

Dr Aguado prescribed 500mg three times per day. On the day before his discharge on that schedule, Dr Aguado also prescribed Rivotril, 1mg three times per day. Later, however, before he left the hospital on 28 September 1987 after another admission, Dr Aguado took Mr Catt off Rivotril at his own request (H.Ex 2.1; T/T p1035-6, 1041).
Dr Aguado said that Lithium takes some ten to twelve days to have effect while Rivotril, a quicker acting drug, takes effect within a few hours of ingestion (H.Ex 2.1; T/T p1023 et seq). Rivotril may be prescribed to accelerate the calming effect of Lithium.

Dr Sandfield

Mr Catt was also treated by Dr Sandfield, psychiatrist, who scheduled him for re-admission to hospital on 5 September 1987. Dr Sandfield had also put Mr Catt on Lithium together with Rivotril. He ceased to give him Rivotril, however, at about the end of September 1987. He said that he had initially given Mr Catt some Rivotril from his own stock and had given him a written prescription for it on or about 3 September 1987 (H.Ex 2.6; T/T p1083-6).

Dr Sandfield said that when Rivotril was discontinued, other drugs, Neulactil and Tegretol were prescribed instead. He had no record of any prescription for Rivotril for Mr Catt in 1989 (H.Ex 2.6; T/T p1090-2).

Rivotril: How Much of it was Dispensed?

Mr Catt said that he had always used Owen's Pharmacy at Taree to obtain his prescribed medication (H.Ex B, a statement made on 7 August 1989).

Mr Owens, the Taree Pharmacist who gave evidence only at the trial (H.Ex 2.5; T/T p1181-9), identified his computer record of Mr Catt's dispensing history (T.Ex BB; H.Ex DD). He also identified a number of Mr Catt's prescriptions and repeat authorisations (see H.Ex SSS).

The patient dispensing history (H.Ex DD), is for the period August 1987 to September 1989. It shows that there was only one dispensing of Rivotril in that period. The prescription provided for one repeat.

The clear inference from the documents available is that the original prescription for Rivotril was dispensed on 29 October 1987 and that the repeat was never dispensed (see H.Ex SSS supplemented by the Crown during the

section 12 hearing with what on its face is the pharmacy copy of the repeat authorisation indicating that no medication was dispensed on the authority of it).
As at 29 October 1987 and at all material times thereafter, the evidence supports the conclusion that only one container of Rivotril had been dispensed for Mr Catt and even before that date, he was no longer taking that medication. It would seem likely, therefore, that none of the contents of that container was consumed at least in accordance with the Doctor's directions."

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Davidson ADCJ then discusses the involvement of Mr Newell in the gathering of evidence in relation to the possible contamination of Mr Catt's drinks. The sequence of events is unusual in so far as a police investigation of a possible attempt at the poisoning of any person is concerned:

MR ADRIAN NEWELL'S VISIT TO 2-8 CORNWALL STREET ON 30 JULY 1989

At the section 12 hearing, Mr Newell gave evidence that some days prior to the weekend of 29-30 July 1989, he had spoken to Dr Sandfield and had obtained from him some empty specimen containers.

He had also discussed with Dr Sandfield the erratic behaviour which Mr Catt was said to be exhibiting and whether overdoses of Lithium might be the cause. He said that Dr Sandfield had said that due to the slower reaction of Lithium, there might also be some other faster-acting substance such as Rivotril which might explain Mr Catt's quick deterioration in behaviour (H/T p904, 926). This evidence of Mr Newell's is of high significance, as will appear.

Mr Catt was due to appear at the Taree Local

Court on 31 July 1989 in the committal proceedings as to the sexual assault charges.

On 30 July 1989, Mr Newell went to where Mr Catt was then still living at 2-8 Cornwall Street to pick up a change of clothes for Mr Catt so that he might be suitably dressed for court on 31 July.

On his visit to the office at 2-8 Cornwall Street on Sunday 30 July, Mr Newell took from the office refrigerator, a carton of milk, another of chocolate milk and one containing orange juice. There was evidence that these were liquids which Mr Catt was in the habit of consuming in order to quench a thirst which is said to be aggravated by taking Lithium.

Mr Newell took these cartons to his home at Old Bar and stored them in a refrigerator overnight.
DET SGT THOMAS: DID HE KNOW MR ADRIAN NEWELL INTENDED TO TAKE THE LIQUIDS?

Mr Newell said that he had spoken to Det Sgt Thomas in Taree on 29 July 1989. This was the first meeting between them after Det Sgt Thomas took charge of the investigation.

Mr Newell deposed that he did not tell Det Sgt Thomas of his intention to collect consumables from 2-8 Cornwall Street, but that he did tell Det Sgt Thomas of his suspicions relating to Mr Catt being overdosed with prescribed medications.

There was admitted at the section 12 hearing, without objection, a portion of the transcript of evidence given by Det Sgt Thomas at the Roseanne Catt committal proceedings (H.Ex AL).

Det Sgt Thomas is recorded as having said in effect that what had been done by Mr Newell on 30 July had been at Det Sgt Thomas' suggestion made on 29 July: "I suggested that he might do something and he did it and later as the result

of something else I was told I took the samples to the Government Analysts". Later in his evidence he said, Det Sgt Thomas is recorded as having said in effect that what had been done by Mr Newell on 30 July had been at Det Sgt Thomas' suggestion made on 29 July: "I suggested that he might do something and he did it and later as the result of something else I was told I took the samples to the Government Analysts". Later in his evidence he said, "He suggested to me that he might do certain things. He did that and gave me the samples that he'd taken possession of".

On 31 July 1989 at his home, in the presence of Det Sgt Thomas, Mr Newell decanted some of the liquids from each of the three cartons into a specimen container previously provided to him by Dr Sandfield. He then gave the bulk of the material to Det Sgt Thomas who said he took the three cartons with him back to Newcastle where he returned that day from Taree. The bulk containers remained at the Newcastle Police Station until submitted to the Government Analysts for analysis on 10 August 1989 (H/T p49-50).
At the section 12 hearing, Mr Thomas said that having met Mr Newell on 29 July 1989 and having picked up the materials on 31 July 1989, there was a further conversation between them in which Mr Newell had said he suspected that "Roseanne was drugging Barry".

CONCLUSION AS TO DET SGT THOMAS' KNOWLEDGE OF WHAT MR ADRIAN NEWELL INTENDED

I find that Det Sgt Thomas knew, on 29 July 1989 that Mr Newell was going to collect from the office premises at 2-8 Cornwall Street specimens of Mr Catt's liquids in order that they might be subjected to analysis for traces of Mr Catt's prescribed medication. I reject Mr Newel's evidence to the effect that he did not tell Det Sgt Thomas what he intended.

I find that before he collected those

substances, Mr Newell was well aware of the significance a finding in them of traces of Lithium and Rivotril in combination might have.

I also regard it as likely that on or before 31 July 1989, and probably on 29 July, Mr Newell informed Det Sgt Thomas of the advice of Dr Sandfield that the odd behaviour of Mr Catt, noticed by a number of people including Mr Newell, may have resulted from overdosage of Lithium and a drug such as Rivotril in combination.

THE ANALYSES FOR LITHICARB AND CLONAZEPAM

Mr Newell said that he gave the specimen containers and their contents to Dr Sandfield with a request that he have them tested (H/T p901).

Part of H.Ex E consists of a one-page signed statement dated 22 November 1989 of Mr John Dickeson, Clinical Chemist, Royal Newcastle Hospital. Whether there should be a second page of this statement I am unaware. The other part of H.Ex E is extracts from a statement of Dr Sandfield dated 18 September 1989, only the second page of which bears signatures.

Neither Dr Sandfield nor Mr Dickeson was called at the section 12 hearing and Mr Dickeson was not called at Roseanne Catt's trial. Having regard to the importance of these witnesses, this was an unsatisfactory way of presenting their evidence at the section 12 hearing. If there was an explanation for the absence of these witnesses then I am not aware of it except that I understand that Dr Sandfield may be in ill-health.
So far as H.Ex E relates to Dr Sandfield, however, it may be regarded as uncontroversial. It refers to a conversation with Mr Newell at the end of July 1989 concerning milk and orange juice taken from Mr Catt's refrigerator and continues, "As a result, I made some arrangements for samples of the liquids to be

analysed at the Royal Hospital, Newcastle".

Mr Dickeson's statement was admitted, without objection, and I propose, therefore, to treat it too as evidence of the facts asserted. It shows that on Monday, 7 August 1989, Mr Dickeson received from Dr Sandfield the four specimen containers; two with orange juice, one of plain milk and the other of chocolate milk. He also received a request on an accompanying form from Dr Sandfield that the contents be tested for both Lithium and Clonazepam (H.Ex 12).

Mr Dickeson "subsequently" tested one of the containers of orange juice for Lithium and found it to contain greater than 200mg per litre of that substance. He carried out no further tests on any of the substances for reasons which do not appear. He contacted Dr Sandfield and informed him of what he had found. On the same day as he spoke to Dr Sandfield, he spoke to Det Sgt Thomas. As will be seen it is likely that Mr Dickeson spoke to Det Sgt Thomas on 7 August 1989.

All specimen containers were then put into a foam "Esky" which was picked up from the hospital on 10 August 1989 by Det Sgt Thomas.

H.Ex 12, the pathology request form addressed to the Royal Newcastle Hospital by Dr Sandfield for tests for the presence of Lithium and Clonazepam, has a notation on it "send to Div'n Anal Labs".

On the back of the form there is some other unidentified writing part of which reads as follows, "Lithium and Clonazepam levels - sent to Analytical Laboratories, Lidcombe". This clearly refers to the sending of the materials for further testing as to both substances to the Government Analytical Laboratories in Lidcombe, and suggests these were the terms of the initial request received (para. 314).

DET SGT THOMAS' INTERVIEW WITH MR BARRY CATT ON 7 AUGUST 1989

On 7 August 1989, after he had given evidence at the Family Law Court, Mr Catt was interviewed by Det Sgt Thomas at the Newcastle Police Station and signed the statement then made (H.Ex B).

Mr Catt confirmed to Det Sgt Thomas that his current dose of Lithium was four tablets in the morning and four in the evening usually taken with milk. He said he normally got a prescription for Lithium from Dr Sandfield when he visited him for a check up and blood test for Lithium levels. He said that his prescription was for one bottle of 100 tablets and one repeat authorisation for the same number.

Mr Catt claimed that on the majority of occasions, Ms Catt would "negotiate" his prescriptions. This does not however seem to accord with such prescriptions and repeat authorisations as are in evidence, H.Ex SSS.

There are two prescriptions or repeats dated within the period 1 May 1989-31 July 1989 specified in Count 5 of the indictment. Only one of these indicates that Ms Catt picked up the medication, the other appears to be signed by Julie Catt. Of the other eight which bear dates outside that period, only two indicate that the medication was collected by Roseanne Catt, these being dated in February 1987 and March 1988. The fact, of course, that one of the Catt children may have collected the medication on other occasions does not exclude that they may have done so on behalf of either Ms Catt or Mr Catt.

Mr Catt said that he did not think that in the month or six weeks prior to 7 August 1989 Ms Catt "filled any prescriptions because our marriage has reached the stage of no return" (H.Ex B, Q&A 16). Before then, he maintained, he collected the medication the majority of

times prior to 23 May 1988 when he commenced living by himself at 2-8 Cornwall Street (H.Ex B, Q&A 17-19). Mr Catt said that he did not think that in the month or six weeks prior to 7 August 1989 Ms Catt "filled any prescriptions because our marriage has reached the stage of no return" (H.Ex B, Q&A 16). Before then, he maintained, he collected the medication the majority of times prior to 23 May 1988 when he commenced living by himself at 2-8 Cornwall Street (H.Ex B, Q&A 17-19).
Mr Catt said that when Ms Catt did pick up the tablets she would take them to 1 Cornwall Street. When he ran out of tablets at the workshop he had to ask her if she had any at the house and he said "she normally did". He maintained that of those he kept in the office where he lived after 23 May 1988, Ms Catt often asked him if he had the tablets and would sometimes get them for him from the cupboard he kept them in (H.Ex B, Q&A 25-27).

PROVENANCE OF THE MILK AND ORANGE JUICE

Mr Catt said he normally bought from the milkman two litre plastic containers of chocolate milk and "until about 2-3 months" prior to 7 August 1989, a two litre carton of white milk every day. He said that in the previous three months staff had not been coming into the office for morning tea so he might be getting only a two litre container of white milk every two days. He claimed that during the three month period prior to 7 August 1989, only he had used the milk in the refrigerator (H.Ex B, Q&A 31-35).

Mr Catt said that on Thursday, 27 July he had bought the milk which Mr Newell had removed from his refrigerator on 30 July 1989, and that he had drunk some from each container on Friday, 28 July. He tended to exclude Saturday or Sunday as a day on which he might have consumed any of the rest because he said, "I haven't been drinking much over the weekends because I have been steering clear of the

business to avoid Roseanne and the children". He said that he had bought the orange juice on "the same night" as he bought the milk (H.Ex B, Q&A 46-48).

Mr Catt told Det Sgt Thomas that he was not aware that Mr Newell had removed liquids from his office refrigerator on 30 July 1989. Det Sgt Thomas confirmed that on 31 July 1989 he had spoken to Mr Newell about the containers and "about the reason he took possession of them" (H.Ex B, Q&A 42).
Det Sgt Thomas also informed Mr Catt that a scientific analysis had been carried out on a portion of the contents "of each" of these containers by "Dr Dickeson" of the Royal Newcastle Hospital and that a trace of the drug Lithium was located "in each of these samples". This of course, although inaccurate, confirms Mr Dickeson's statement to the effect that he had spoken to Det Sgt Thomas (H.Ex B, Q&A 42-44). Det Sgt Thomas also informed Mr Catt that a scientific analysis had been carried out on a portion of the contents "of each" of these containers by "Dr Dickeson" of the Royal Newcastle Hospital and that a trace of the drug Lithium was located "in each of these samples". This of course, although inaccurate, confirms Mr Dickeson's statement to the effect that he had spoken to Det Sgt Thomas (H.Ex B, Q&A 42-44).

WAS MS ROSEANNE CATT THE ONLY PERSON WHO HAD AN OPPORTUNITY TO PUT THE LITHIUM AND RIVOTRIL IN THE LIQUIDS?

Accepting the accuracy of Mr Catt's answers to Det Sgt Thomas as recorded in H.Ex B, if Ms Catt did put or cause to be put Lithium and Rivotril in the liquids which Mr Newell removed from Mr Catt's refrigerator on 30 July 1989, she could only have done so after Mr Catt had purchased them on the evening of Thursday, 27 July and before Mr Newell removed them on Sunday, 30 July 1989.

If Mr Catt did consume some of those liquids on Friday, 28 July as he said he did, there is no evidence or suggestion that he was adversely affected by it at any relevant time. The evidence of Mr Newell is that Mr Catt had spent the weekend of 29-30 July away from 2-8 Cornwall Street either at Mr Newell's place or at the house of Mr Catt's friend, Mr Max French.

Whatever opportunity Ms Catt may have had to place the medications in Mr Catt's liquids, Mr Newell also had an opportunity. Having discussed the matter with Dr Sandfield some days previously, he was aware of the doctor's view that overdoses of Lithium and Rivotril in combination might provide an explanation for the odd behaviour being exhibited by Mr Catt.

There is no direct evidence that Mr Newell independently of Mr Catt had access to either of these prescribed medications on or before 30 July. Mr Catt, however, told Det Sgt Thomas that he kept his medications in the kitchen at the office at 2-8 Cornwall Street (H.Ex B, Q&A 23), the place to which Mr Newell went on 30 July and removed the very liquids later found to be contaminated with medications of the kind prescribed for Mr Catt.

WHEN WAS THE REQUEST FOR RIVOTRIL ANALYSIS MADE TO THE GOVERNMENT ANALYTICAL LABORATORIES?

Det Sgt Thomas said at the trial that he had delivered the bulk liquids together with the specimen containers to a person at the Government Analytical Laboratories he described as a female, "Dr Prolov" (H.Ex 2.6; T/T p1747).

Ms Tatiana Prolov, a senior analyst at the Forensic Toxicology Laboratory at Lidcombe, confirmed receipt of the liquids at the Laboratory on 10 August 1989. The associated documentation which may have established the scope of that request for analysis, however, is not in evidence.

Ms Prolov was shown a document which she described as "not a standard form that came from the hospital" which she later specified as Newcastle Hospital (H.Ex 2.5; T/T p1531, 1533). Whether this was H.Ex 12 or a copy of it does not appear nor is it anywhere else affirmatively established what the initial request for analysis was. If it was H.Ex 12, then it was clearly enough a request for analysis of both substances.

There is a reasonable inference, which I draw, that since Dr Sandfield's request to Newcastle Hospital was for analysis for both substances, which Mr Dickeson seems to have been unable or unwilling to comply with in full, it is likely that a request for analysis for both Lithicarb and Clonazepam was made to the Government Analytical Laboratories when the milk and orange juice were delivered on 10 August 1989. This is suggested by the note on the reverse side of H.Ex 12 (see para. 296).

It is clear, however, that different analysts conducted, on different dates, a separate test for each substance. The first analysis was for Lithium levels which were confirmed as to each of the containers by Mr Kacprzak on 15 August 1989. On 29 August 1989, Mr Sheehy tested for and found traces of Clonazepam (H.Ex 2.6; T/T p2330. See also certificates, T.Ex VV; H.Ex D). Although his certificate purports to show results for both Clonazepam and Lithium, Mr Sheehy incorporated into his certificate the results obtained by Mr Kacprzak for Lithium.

The gap in dates between the test for Lithium and that for Clonazepam, and in particular the fact that the test for Clonazepam did not take place until after 24 August 1989, the date of Ms Catt's arrest, is a matter of significance (see paras. 429-448).

Ms Maree Nieradka (H.Ex 2.5; T/T p2036-40) said that the Trace Metals Laboratory in which Mr Kacprzak worked and in which he did the testing

for Lithium, was separate and distinct from the Forensic Toxicology Laboratory in which Mr Sheehy did the testing for Clonazepam. Whether, however, this division of functions may have been the reason for the fourteen day delay between the tests does not appear.

A document internal to the Government Analytical Laboratories which is in evidence, Pt H.Ex C, consists of photocopies of two separate documents. Firstly, there is a "Request for Analysis of Biological Specimens" which does not appear to be the initiating request in spite of its title, and which relates to Lithium. The document sets out "Doctor or hospital submitting specimen for return of report". Against this appears "Newell, Adrian T296F.Tox Laboratory". T296 is a reference number given internally within the Government Analytical Laboratories. This document was received by Mr Flanjak (H.Ex 2.3; T/T p1526-7), the officer in charge of the Trace Metals Laboratory on 11 August 1989 from another laboratory employee, Ms Roslyn Wilson (H.Ex 2.7; T/T p1522-5). Mr Flanjak passed the materials for testing to Mr Kacprzak.

Ms Carmel Anderson, who was involved in making a record of the receipt of the materials when delivered, said she thought the name "Newell" came from the police officer who brought in the samples (H.Ex 2.1; T/T p2013). Later, however, she said that she thought that the police officer's name was Newell and he wanted the items recorded in his name. She said he gave the name "Newell" otherwise she would not have put that name in the laboratory register. She said she also marked the name "Newell" on the containers of materials to be tested.

The second part of H.Ex C consists of a document entitled "Report of Analysis", signed by Mr Kacprzak indicating the result of the Lithium test. The combined document got into evidence at the trial in photocopy form in order to deal with an objection (H.Ex 2.4; T/T

p2274).

The certificate of Mr Sheehy, as to Clonazepam, indicates in its original form that the items analysed were received on 10 August 1989 from "Constable Paget". This was deleted from the certificate tendered at the trial as was the incorporation into Mr Sheehy's certificate of findings in relation to Lithium, an analysis which of course he did not perform. Both the original form of the certificate as well as the photocopy, made to deal with objections taken, are now H.Ex D.
Although the certificate is dated 29 September 1989, it is clear from both the transcript of evidence and from her Honour's Summing Up that the evidence was that the Clonazepam analysis was done on 29 August 1989 (H.Ex 2.6; T/T p2330; S/U p130).

DET PAGET AND THE HANDBAG

On 24 August 1989 when Ms Catt was arrested and the house at 1 Cornwall Street then occupied by her was searched, a number of items were removed by the police. Det Paget said in evidence that he found in a black handbag which was in a drawer in the main bedroom, two medication containers, one labelled Rivotril and the other Lithium.

The significance for the Crown case of the finding of these substances in combination in circumstances which strongly suggested that Ms Catt was and had been in possession of them is apparent. These very substances were found in combination in Mr Catt's liquids as analysis proved (but not until 29 August 1989 in the case of Clonazepam). This provided ground for the inference that as at 27-30 July 1987 when Ms Catt may have had the opportunity to put these substances in combination into Mr Catt's liquids, she also had access to them.

No black handbag was noted on the record made of property seized in the search (H.Ex HH) nor

is there any specific reference in it to "Lithium" or "Rivotril". Det Sgt Thomas and Det Paget both said that the record of property seized (H.Ex HH) was compiled by them in conjunction with Ms Mound, described as the Inspector's clerk, who was called at neither the trial nor the section 12 hearing.
The omission from H.Ex HH of these items is all the more remarkable especially so far as Lithium is concerned, because whether or not the police as at 24 August 1989 were likely to have recognised the significance of Rivotril in conjunction with Lithium, Det Sgt Thomas well knew of the significance of at least Lithium since he had been informed by Mr Dickeson of it having been found and had passed on that information to Mr Catt on 7 August 1989 (H.Ex B). One would have expected therefore in the record of property seized, a clear indication, if it had been found, that Ms Catt had Lithium at 1 Cornwall Street in her possession and that fact duly and carefully recorded providing as it did confirmatory evidence of Mr Newell's suspicions expressed to Det Sgt Thomas on 30-31 July 1989, as to Ms Catt."

The problem of an affidavit sworn by Mr Catt

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Davidson ADCJ admitted into evidence part of an affidavit sworn by Mr Catt in connection with an application which he made for victim's compensation under the Victims Support and Rehabilitation Act 1996. It was given the label H.ExAAB.

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Objection was taken to the admission of the evidence having regard to s 84 of the Act relying on the decision of this Court in R v Kremmer (2000) 50 NSWLR 538. His Honour provisionally admitted the document, it being argued that on its proper construction s 84 was limited to sexual assault matters.

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Section 84 is in the following terms. Although it was different in Kremmer the differences are not material to the decision in the present appeal:

"(1) Despite any rule of law to the contrary:

(a) an application for statutory compensation or for payment for approved counselling services, and

(b) any documents supporting the application (whether or not furnished when the application is lodged) or any documents furnished to, or prepared by or on behalf of, the Tribunal at any time in connection with the application, and

(c) any transcript of evidence given to the Tribunal in a hearing of the application;

are not admissible in evidence against any person in criminal proceedings (other than criminal proceedings in which the applicant is the accused) arising from substantially the same facts as those on which the application is based.

(2) A person cannot be required (whether by subpoena or any other procedure) to produce any application, document or transcript of evidence that is not admissible in evidence in criminal proceedings under subsection (1) in, or in connection with, any criminal proceedings."

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In Kremmer the majority judgment was delivered by Studdert J. When considering the class of documents protected by subsection (2) his Honour has been generally understood as determining that subsection (1) should be construed as precluding the admission into

evidence of any document falling within the relevant class, whether that document was tendered by the accused or the prosecution.
142

The relevant passages from the reasons of Studdert J are as follows:

"Whilst s 84(1) prohibited the evidentiary use of the documents categorised, upon its introduction s 84(2) was directed at the removal of any requirement to produce such documents in the circumstances addressed in the subsection. A person cannot be required, by way of subpoena or otherwise, 'in, or in connection with, any criminal proceedings' to produce any such documents if they are 'not admissible in evidence in criminal proceedings under subsection (1)'.

The crux of the appellant's submission is that s 84(1) only prohibits the admissibility of documents in the defined categories against any person and does not prohibit such admissibility for any person. For example, the subsection, it was submitted, does not prohibit the admission of such documents into evidence for a relevant purpose such as to challenge the evidence of an alleged victim. It was submitted that s 84(2) does not permit resistance to a subpoena or other procedure for the production of a document of the type identified where the production is called for by the person charged in the criminal proceedings.

Section 84(2) could have been more clearly expressed but I do not consider it ought to be construed in the manner for which the appellant contends. It is not, of course, for this Court to amend the subsection, but rather to determine what parliament meant by the language it employed. Spigelman CJ recently reviewed the relevant principles of statutory construction in R v Young (1999) 46 NSWLR 681 at 686 [5]-[10]. The Chief Justice said (at [6]):

'In order to construe the words actually used by parliament, it is sometimes necessary to give them an effect as if they contained additional words. This is not, however, to introduce words into the Act. This involves the construction of the words actually used ... ' "
at 540-541

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Dowd J dissented the critical passages in his Honour reasons being:

"The words 'admissible in evidence' disclose a clear legislative intention to protect the accused charged of an offence, the offence giving rise to a victim's compensation claim. There is, therefore, no expressly legislative prohibition against the subpoenaed material which may be used by an accused. Clearly, an accused does not seek to admit evidence against his or her own interest.
An accused may therefore use any material, either within the prohibited categories or any other material not within those categories. Section 84(2) of the Act deals with the subpoena or any other means of a requirement to produce documents, and incorporates the following: '... any application, document or transcript of evidence.' These three categories are qualified by the adjectival clause 'that is not admissible in evidence in criminal proceedings under subsection (1)'. Therefore, the prohibition under the subpoena or a call to produce or other such device is completely qualified by the phrase, and therefore, sin An accused may therefore use any material, either within the prohibited categories or any other material not within those categories. Section 84(2) of the Act deals with the subpoena or any other means of a requirement to produce documents, and incorporates the following: '... any application, document or transcript of evidence.' These three categories are qualified by the adjectival clause 'that is not admissible in evidence in criminal proceedings

under subsection (1)'. Therefore, the prohibition under the subpoena or a call to produce or other such device is completely qualified by the phrase, and therefore, since an accused can require production of documents for the accused's own forensic purposes, an accused's requirement to produce cannot be in the prohibited category referred to in s 84(1), and therefore, an accused may require production of documents under s 84(2) of the Act." at 547

144

The appellant submits that Studdert J was in error and this Court should find that s 84(1) only precludes the tender of material in the relevant categories if tendered against the accused. Attention is drawn to the fact that although the judgment in Kremmer was concerned with the application of s 84(2) this could only be determined if s 84(1) was properly understood and in the passages identified this task was not undertaken by Studdert J. The submission is in the following terms:

"Something seems to have gone radically wrong with this passage. The first sentence states a conclusion which, while unexceptionable, does not assist in determining the issue. Adding the words 'against any person' before the words 'in criminal proceedings' is unnecessary and makes no difference because they are there in effect in any event through the dependency of subsection (2) on subsection (1). The second sentence also does not advance the issue, but in this instance because the words in subsection (1) to which the words 'criminal proceedings under subsection (1)' are said to refer are simply not present in subsection (1). If one assumes that what was intended was a reference to the criminal proceedings referred to by subsection (1), that is, 'criminal proceedings (other than criminal proceedings in which the applicant is the accused) arising from substantially the same facts as those on

which the application is based', that too is unexceptionable but does not advance the issue. All it does, like the first sentence, is to spell out the obvious which arises from the dependency of subsection (2) on subsection (1)."

145
Although the legislative provision could have been more clearly expressed I am of the view that the opinion of the majority in Kremmer is correct. It was not necessary for Studdert J in Kremmer to provide an authoritative discussion of s 84(1) as the court, on that occasion was concerned with the effect of s 84(2).

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To my mind, the words "against any person" are not confined, as the appellant's submission requires, to the tender of documents in criminal proceedings "against the accused." So much is plain from the exception - "other than criminal proceedings in which the applicant is the accused." The reference to "the accused" in the exception clearly indicates that the reference to "any person" in the substantive provision must be a reference to any person whose evidence is sought to be diminished by reference to the documents.

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I am also satisfied that construed in this manner the section will ensure that unless an accused has made an application, in which case the documents may be tendered, any document in support of an application made by another person cannot be used against that a person in criminal proceedings. No doubt this course was taken to ensure that persons would not be inhibited in making an application for compensation by a concern that the detail supplied with the application may be revealed to the alleged perpetrator of the crime.

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It was suggested that because s 84(2) was added to s 84 by the Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 1999 the section should be confined to sexual assault crimes. I see no justification for this conclusion. Although amended by that Act the section is part of the Victims Support and Rehabilitation Act which is of general application.

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Accordingly, the portion of the affidavit of Mr Catt admitted into evidence by Davidson ADCJ must be rejected. However, although the evidence is not admissible his Honour's discussion remains relevant and indicates the limited use his Honour made of the material in his ultimate findings.

Further discussion of matters of particular relevance to count 5 by Davidson ADCJ

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The relevant portion of Davidson ADCJ's consideration of count 5 is lengthy. However, in order to come to a conclusion with respect to that aspect of the appeal it is necessary to consider his Honour's reasons in detail. I have reproduced them below.

H.EX AAB

Documents which I provisionally admitted as H.Ex AAB, consist of a portion of an affidavit of Mr Catt sworn on 23 August 1996 in connection with an application by him for victim's compensation under the Victims Support and Rehabilitation Act 1996. The rest of H.Ex AAB is edited portions of a statement of Mr Newell in support of Mr Catt's application. Neither of these documents was shown to any witness whilst in the witness box at the section 12 hearing.

H.Ex AAB was provisionally admitted because the Crown took objection to it in reliance on section 84 of the Act as that section was interpreted by the Court of Criminal Appeal in R v Kremmer (2000) 50 NSWLR 538. I initially rejected the tender on the authority of Kremmer's case. On further reflection, however, I provisionally admitted the documents, Mr Molomby having indicated that he proposed to challenge my initial judgment in the Court of Criminal Appeal. It seemed to me on the balance of convenience that it was better to admit the documents provisionally. If the Court of Criminal Appeal holds that Kremmer's case is of general application and not limited to sexual assault matters then any conclusion drawn wholly or partly on the basis of these documents will need to be discounted to that extent, although I do not regard H.Ex AAB as decisive.

Part of H.Ex AAB, consisting of the edited statement of Mr Newell, indicates (at paras. 42-44) that having been concerned about symptoms exhibited by Mr Catt for some months prior to the end of July 1989, Mr Newell suspected Ms Catt of administering large doses of Lithium to Mr Catt. He then continues, "After consultation with Barry's doctor and chemist, I made enquiries which led me to believe that Roseanne may be drugging Barry with some other quicker acting drug as well (Clonazepam)". The context clearly indicates that this belief of Mr Newell's was formed prior to 30 July 1989. This simply confirms what Mr Newell said in evidence in the section 12 hearing.
Later in the statement (paras. 53-54) Mr Newell makes reference to proceedings which in their context, are clearly the Family Law Court proceedings on 7-8 August 1989. He recites taking Mr Catt after court to the Newcastle Police Station.

Para. 53 then continues, "By coincidence they

had that afternoon received results of the analysis of the drinks that I had previously supplied from Barry's office fridge. The police told Barry that the results showed that he was being poisoned by large overdoses of Lithium and Clonazepam". This is either untrue or Mr Newell is at least partially mistaken. There had been no testing of any of the substances for Clonazepam as at 7 August 1989, only for Lithium.

The reference to Lithium and Clonazepam in combination, however, particularly as having come from "the police" is a factor in assisting to the conclusion that prior to 24 August 1989, Det Sgt Thomas is likely to have been aware of the importance of a connection being established between Ms Catt and her possession of both of these substances. The reference to Lithium and Clonazepam in combination, however, particularly as having come from "the police" is a factor in assisting to the conclusion that prior to 24 August 1989, Det Sgt Thomas is likely to have been aware of the importance of a connection being established between Ms Catt and her possession of both of these substances.

By itself, however, I do not regard this evidence as supporting that inference of knowledge. It is in my view too easily explicable in terms of hindsight. There is other evidence already canvassed tending to support the inference that prior to 24 August 1989, Det Sgt Thomas was aware of the significance of Lithium and Rivotril in combination.

MS ROSEANNE CATT'S RECORDED INTERVIEW OF 24 AUGUST 1989

The omission from H.Ex HH, the record of property seized, of any reference to a container of Lithium is to be considered in the context of the following: After the search on 24 August 1989, and the police had returned with property seized to the Taree Police Station, Ms Catt was interviewed by Det Sgt

Thomas and Det Paget. There were a number of recorded interviews.

These documents (H.Ex UUU) are of no evidentiary significance as such in the Crown's case since Ms Catt elected not to respond to the questions, but in an interview commencing at 11.45am, Det Sgt Thomas is recorded as having told Ms Catt that he had been informed that she had access to the refrigerator and the kitchen cupboards in the office at 2-8 Cornwall Street. He is recorded as having further informed her that she also had access to "prescribed Lithicarb tablets Barry Catt was taking during that period". He then told her that on 30 July 1989, partially filled containers of chocolate milk, plain milk and orange drink were removed from that refrigerator and subsequently subjected to scientific analysis which resulted in quantities of Lithium having been located "in each of the containers and their contents".

Clearly, by this time, Det Sgt Thomas had knowledge of the results of Mr Kacprzak's analysis as well as Mr Dickeson's. If on that day Det Paget had indeed found a Lithium container in circumstances strongly suggestive of Ms Catt's possession of it then I find it remarkable that the recorded interview does not go on to recite that.

Mr Thomas said at the section 12 hearing that he could not recall if he had interviewed Ms Catt about a black purse (handbag) or about Lithium or Rivotril having been located in a black purse (H/T p1109). The evidence indicates that he did not.

The significance of at least Lithium was as well known to Det Paget as it was to Det Sgt Thomas as at 24 August 1989. Det Paget said in evidence that he would have been looking mainly for Lithium in conducting the search at 1 Cornwall Street. He could not explain the absence of any reference to a black purse in

the record of property seized (H/T p533). He said that he thought that Mr Newell had told the police that they should look for Lithium although he did not know about Rivotril (H/T p578).

DET PARKES

Det Parkes was a physical evidence officer who took part in the search. He said that his role was "in part" that of Exhibits Officer. He had specific training in the collation of physical evidence. He said he did not keep an exhibits log but he did "keep a log of certain exhibits that I took possession of".

The notes which he took are H.Ex AAA. There is a reference in them to a "quantity of prescribed drugs" noted as having been recovered from the en suite of the main bedroom by Const Cottee. There is also a reference in H.Ex AAA to an envelope containing assorted tablets from bedside drawers, having been found by Det Paget (c/f para. 348).
There is no reference in H.Ex AAA to Lithicarb, Lithium, Rivotril or Clonazepam nor to a black purse. There is a reference to a black brief case but it is clear from the evidence of Det Paget that this was a distinct and separate item from the black handbag.

Det Parkes was not asked to arrange for the analytical testing of any substances said to have been found during the search on 24 August 1989, except that Det Sgt Thomas asked him to arrange for the analytical testing of a bottle labelled "Bach Flowers" on 22 September 1989 (H/T p603-29), an irrelevant substance.

CONST COTTEE

Const Cottee also took part in the search. She said that the words "Lithium", "Lithicarb", "Rivotril" and "Clonazepam" meant nothing to her in terms of that search (H/T p512-3).

DET PAGET: PRIOR INCONSISTENT STATEMENTS

In Det Paget's recorded interview of 12 March 1990 with Det Insp Chapman of the Police Internal Security Branch the following appears (H.Ex ZZZZZ): In Det Paget's recorded interview of 12 March 1990 with Det Insp Chapman of the Police Internal Security Branch the following appears (H.Ex ZZZZZ):

'Q92 Did you search the main bedroom at 1 Cornwall Street at any stage on 24 August 1989?

A92 No but I did enter it.

Q132 Did you take possession of either a black handbag, a white Glomesh handbag, a black clutch bag and a beauty case and jewellery?

A132 No.

Q133 Did you take possession of any medication including Ventolin?

A133 No.

Det Paget signed each page of H.Ex ZZZZZ after acknowledging that he had read each page and confirmed its truth and accuracy apart from "a few alterations" which are presently irrelevant (Q&A 407-412).

Mr Molomby of counsel conceded that H.Ex ZZZZZ was available to defence counsel at trial. The passage quoted above was not brought to the attention of Det Paget either at the trial or the section 12 hearing.

Earlier in the interview, Det Paget said in effect that to his knowledge all property taken during the search on 24 August 1989 had been entered in the record of property seized at Taree Police Station (Q&A 121). He also said, however, that the entering of that record took place at about 7.00pm that is to say after the recorded interviews had been conducted with Ms

Catt (Q&A 125).

He was shown a five-page list of property and asked if he had knowledge of any of it having been removed on 24 August 1989. He gave a lengthy answer commenting on various items in the list included an "envelope containing tablets". He said he had not seen any such envelope (c/f para. 340). During the course of the answer he did not refer to a black handbag or pill containers labelled either Lithium or Rivotril (Q&A 138).

Pt H.Ex AK consists of page 974 of the transcript of evidence at Ms Catt's committal proceedings. On that page, Det Paget refers to items MFI Q and R which then became Exhibit 89, which, it seems to be agreed, is the container of Lithium and of Rivotril claimed to have been found by Det Paget. He gave evidence (Pt H.Ex AK) that he "found them in a small black purse in a bedroom drawer of a dresser". He was asked of what bedroom and said, "Of the main bedroom of the Cornwall Street house. They were in a little black purse together with some Pt H.Ex AK consists of page 974 of the transcript of evidence at Ms Catt's committal proceedings. On that page, Det Paget refers to items MFI Q and R which then became Exhibit 89, which, it seems to be agreed, is the container of Lithium and of Rivotril claimed to have been found by Det Paget. He gave evidence (Pt H.Ex AK) that he "found them in a small black purse in a bedroom drawer of a dresser". He was asked of what bedroom and said, "Of the main bedroom of the Cornwall Street house. They were in a little black purse together with some - I think there was (sic) a few coins".
The date on which Det Paget gave that evidence does not appear but it is agreed that the committal proceedings took place between 14 May 1990 and 27 July 1990. Thus on a date between those dates, Det Paget, notwithstanding his denials on 12 March 1990 to Det Insp Chapman (H.Ex ZZZZZ), was positively asserting on oath that he had found a container each marked

Lithium and Rivotril at 1 Cornwall Street, in a black "purse" in a drawer in the main bedroom.

DID DET PAGET IDENTIFY THE CONTAINERS OF LITHIUM AND RIVOTRIL AT THE TRIAL?

As I understood the submissions of Mr Martin of counsel, he suggested that Det Paget did not identify at the trial the containers he claims to have found. The transcript, however (H.Ex 2.5; T/T p2122-3) records Mr Crown on 9 July 1991 as having shown Det Paget two containers of which Det Paget said, "They were in the black handbag".

There followed an objection to the tender which was withdrawn at that stage, Mr Crown asking that he might remove some part of "that MFI". It is clear from the context that all concerned understood it was for the purposes of analysis that it was being removed, the contents of these containers not having been previously submitted for analysis. Senior Counsel for Ms Catt at the trial made it clear that he had no objection to that course (H.Ex 2.5; T/T p2123).

Subsequently (H.Ex 2.5; T/T p3776) the Crown is noted as having referred to page 2123 of the transcript and having it noted that he had been showing the witness two containers, which were subsequently marked for identification 92 and 134. Mr O'Louglin QC, for Ms Catt, is recorded as having said that there was "no issue in regard to the bottle of Rivotril and Lithicarb".

MFI 92, the container said to contain Rivotril which subsequently became T.Ex DDD, was so marked during the evidence of Ms Amanda Marlin (Taylor). She spoke of an occasion, which she placed in about March 1988 (H.Ex 2.4; T/T p1365), of seeing Ms Catt taking a bottle of pills from her handbag and putting some of them in a glass of wine which was on the kitchen table and saying words to the effect that "she hopes it kills him". She described the pills

that she saw as white and about the size of a tablet which Mr Crown, on 19 June 1991, showed the witness from the bottle which he then had marked MFI 92 (H.Ex 2.4, T/T p1363-4, 1380). MFI 92, the container said to contain Rivotril which subsequently became T.Ex DDD, was so marked during the evidence of Ms Amanda Marlin (Taylor). She spoke of an occasion, which she placed in about March 1988 (H.Ex 2.4; T/T p1365), of seeing Ms Catt taking a bottle of pills from her handbag and putting some of them in a glass of wine which was on the kitchen table and saying words to the effect that "she hopes it kills him". She described the pills that she saw as white and about the size of a tablet which Mr Crown, on 19 June 1991, showed the witness from the bottle which he then had marked MFI 92 (H.Ex 2.4, T/T p1363-4, 1380).

As to MFI 134, the bottle of Lithium tablets which became T.Ex CCC, Mr Thomas said at the trial that he "first became conscious of pills and pill bottles" at the police station when he was going through articles which he said had been given to him by Det Parkes and which had been taken from the house at 1 Cornwall Street. He said, "I particularly recall Lithicarb tablets" and identified the container marked MFI 134 as what he had seen as well as other pill bottles (H.Ex 2.6; T/T p1767-8).

There is no substance in Mr Martin's submission. The materials were positively identified as to the Lithium container by Mr Thomas at the trial and as to both by Det Paget.

If, however, it is a correct deduction from the evidence that only one bottle of Rivotril was likely to have been available as at 24 August 1989 to Mr Catt (as to which see para. 457), then it follows that, if Det Paget is telling the truth, the one he found must have been that bottle.

MR ADRIAN NEWELL FINDS ANOTHER BOTTLE OF

RIVOTRIL

On the question whether Ms Catt had access to Rivotril as well as Lithium in the period alleged in the indictment, the Crown relied on further evidence from Mr Newell. This evidence did not come to the notice of the Crown until seven days after Ms Catt's trial commenced on 7 May 1991 when Mr Newell gave a statement dated 14 May 1991 to a police officer at Taylor Square (H.Ex PPP), but before T.Ex CCC and T.Ex DDD were sent for analysis. This followed discussions he had with unidentified legal representative(s) of the Crown (H/T p958).

According to Mr Newell, he and Mr Catt had gone to 1 Cornwall Street, Taree on 5 September 1989. This appears to have been the day on which Mr Bridge, Ms Catt's son, had been there to collect Ms Catt's belongings. A number of other people were there and Det Sgt Thomas and Det Paget were also called to the house (see H.Ex ZZZZZ, Q&A 331 et seq).

Mr Newell claimed that on kitchen shelving in the house he saw a number of containers of prescription medicines. He claimed that these were not visible without moving other bottles and containers in front of them. He took possession of five of them, one of which, according to its label, was of Rivotril dispensed by Owens' Pharmacy on 29 October 1987 for Mr Catt on Dr Sandfield's prescription. This was MFI 87 at the trial.

The dispensing history for Mr Catt (H.Ex DD), as previously canvassed (see paras. 268-272), shows that the only container of Rivotril dispensed for Mr Catt by Mr Owens' pharmacy was on 29 October 1987. It was dispensed on Dr Sandfield's prescription (see also repeat authorisation, Pt H.Ex SSS).

If both Det Paget and Mr Newell are telling the truth, there were two containers indicating Rivotril as their contents at 1 Cornwall Street

in the period August-September 1989, one in a black handbag (purse) and one on a shelf.

The container referred to by Mr Newell in his statement H.Ex PPP is, on its face, the one dispensed by Mr Owens. The question remains however as to what value can be placed on Mr Newell's evidence that he found it on 5 September 1989 at 1 Cornwall Street? This house had been, as recently as 24 August 1989, subjected to what appears to have been a thorough search by a number of police officers. According to their evidence, other prescribed medications had been removed as part of materials thought to be relevant to the police inquiry.

Mr Newell sought to explain his failure earlier to bring the finding of the Rivotril container at 1 Cornwall Street to the attention of those prosecuting for the Crown, by claiming not to have realised the significance of it until he had spoken with Crown lawyers (H/T p958). I am unable to accept Mr Newell's evidence. On his own account, he had since before 30 July 1989 known that Dr Sandfield was of the opinion that odd behaviour exhibited by Mr Catt might be attributable to a combination of overdoses of Lithium and Rivotril, and Mr Newell said he suspected Ms Catt was responsible.

MFI 87 was not admitted in evidence at the trial or the section 12 hearing nor was either of the pill containers T.Ex CCC or T.Ex DDD, which Det Paget claimed to have found, tendered at the section 12 hearing and I understand that they and MFI 87 are not now available. The importance particularly of T.Ex DDD (Rivotril) is clear. If such a labelled container had been in evidence, then it might have helped to explain how it came to be in existence, considering that by August-September 1989, it was almost two years since Mr Catt had been taken off Rivotril, and when it was likely that according to the evidence, only one container of that substance had been prescribed and

dispensed for Mr Catt from a pharmacy. MFI 87 was not admitted in evidence at the trial or the section 12 hearing nor was either of the pill containers T.Ex CCC or T.Ex DDD, which Det Paget claimed to have found, tendered at the section 12 hearing and I understand that they and MFI 87 are not now available. The importance particularly of T.Ex DDD (Rivotril) is clear. If such a labelled container had been in evidence, then it might have helped to explain how it came to be in existence, considering that by August-September 1989, it was almost two years since Mr Catt had been taken off Rivotril, and when it was likely that according to the evidence, only one container of that substance had been prescribed and dispensed for Mr Catt from a pharmacy. Mr Martin, then of counsel for Ms Catt, asserted as a possibility that what had been sent for analysis as MFI 92 (T.Ex DDD), the Rivotril container claimed to have been found by Det Paget in the black handbag (purse), was in fact MFI 87, the Rivotril container produced by Mr Newell after the trial had commenced and claimed to have been found by him in the house at 1 Cornwall Street. If this was so, then there must have been serious error on the part of those representing the Crown which also escaped the notice of senior counsel for the accused and the learned trial judge. It also fails to explain the apparent existence of two Rivotril containers, MFI 92 and MFI 87.

Det Newton who was assisting the Crown at the trial said that on 10 July 1991 she had received from Ms Michelle Taylor, solicitor instructing the Crown at the trial, two bottles already then identified and marked MFI 92 and MFI 134 respectively. Det Newton said she had delivered the bottle labelled Rivotril to the analyst, Mr Malhotra (H.Ex 2.4; T/T p2401-2) and the one labelled Lithium to another analyst, Mr Ziaziaris (H.Ex 2.5; T/T p2404-5).

Mr Malhotra gave evidence on 6 July 1991 (H.Ex 2.4; T/T p2401-2) of having done the analysis

and having issued his certificate (T.Ex AAA; Pt H.Ex RRR). He describes the bottle he received as "Revotril 2" (sic), an indication that it may not have been labelled in the pharmacy. The use of inverted commas in Mr Malhotra's certificate is not suggestive of typographical error or misdescription in the certificate. Mr Ziaziaris analysed the Lithium (MFI 134) and his certificate is T.Ex BBB (Pt H.Ex RRR). Contents of each container corresponded with its label.

The question remains, what was done at the trial about MFI 87? Having first disclosed it to the Crown on 14 May 1991, on 13 June 1991 Mr Newell in evidence identified MFI 87 as one of the containers he claimed to have found in 1 Cornwall Street on 5 September 1989. Mr Crown sought to tender it but it was objected to partly on the basis that senior counsel for Ms Catt said that he had only been served with the statement in relation to it on 14 May 1991. The tender was rejected and the container became MFI 87 after counsel for the Crown had informed her Honour that Mr Catt would be recalled for the purpose of allowing Mr O'Loughlin to further cross-examine him as to Mr Newell's evidence.

MFI 87 is not further referred to. The contents of that bottle are not shown to have been subjected to chemical analysis. Although Mr Catt was recalled at the trial, he does not seem to have been cross-examined as to a visit in September 1989 to 1 Cornwall Street. MFI 87 was in the hands of the Crown as early as May 1991, and Mr Catt was in the witness box for a number of days thereafter, but he does not appear to have been asked in chief or otherwise about any visit with Mr Newell to 1 Cornwall Street in September 1989 nor was he shown MFI 87.
If there was only one container of Rivotril it must have been MFI 87 which was labelled in accordance with the pharmaceutical records, H.Ex DD, and the repeat authorisation Pt H.Ex

SSS. If so, how did there come to be Rivotril tablets, as analysed, in a container labelled "Revotril"? What, in other words, was the source of those last-mentioned tablets? One possible answer is that they came from the container produced to the Crown by Mr Newell, MFI 87. The evidence does not permit an answer one way or the other or suggest when and in what circumstances this may have been done except that it is assumed, of course, it did not occur whilst MFI 92 and MFI 87 were in the possession of those prosecuting for the Crown.

THE MANDARIN ETC

Mr Newell, although having been put on notice by Dr Sandfield before 30 July 1989, said that he did not warn Mr Catt of the doctor's advice that Mr Catt's observed symptoms may have been due to Lithium toxicity with or without Clonazepam "administered by a third party" (see H.Ex 12). Nor did he warn Mr Catt generally of any suspicion he may have had as to foodstuffs in the office refrigerator.

Mr Newell and Mr Catt gave in evidence that Mr Newell had driven Mr Catt to 2-8 Cornwall Street on the night of Sunday, 6 August 1987 in order that Mr Catt might obtain clothing, this time for his court appearance as a witness in the Family Law Court on 7 August 1989.

Still not warned as to the risk of consuming anything whilst he was there, Mr Catt went into 2-8 Cornwall Street, leaving Mr Newell waiting for him in the car outside.

Mr Catt said that his poor performance as a witness when he gave evidence on 7 August 1989 was because he felt "wonky". Mr Newell said signs of this were observed by him in court and, when later that day at Newcastle Police Station Mr Catt was interviewed by Det Sgt Thomas, he too gave evidence of Mr Catt's physical indications consistent with the evidence of Mr Catt and Mr Newell. Mr Catt said

that his poor performance as a witness when he gave evidence on 7 August 1989 was because he felt "wonky". Mr Newell said signs of this were observed by him in court and, when later that day at Newcastle Police Station Mr Catt was interviewed by Det Sgt Thomas, he too gave evidence of Mr Catt's physical indications consistent with the evidence of Mr Catt and Mr Newell.

The suggested explanation of this is that Mr Catt, whilst he was in the office premises at 2-8 Cornwall Street on 6 August getting his clothes, said he had felt pangs of hunger and thirst. Accordingly, he devoured some devon which was in the refrigerator, drank some milk and emerged from the premises, according to the evidence of both Mr Catt and Mr Newell, eating a mandarine.

Although there was no direct evidence to support the contention, the inference which the jury were asked to draw was that Ms Catt had laced one or other of these foods with overdoses of Mr Catt's medication.

Although 6 August 1989 was outside the relevant period charged in Count 5, the evidence was left to the jury as relevant to the question whether Ms Catt had caused Mr Catt to take overdoses of Lithium within that period (S/U p196). A submission by counsel to the effect that there was no evidence that the mandarine was contaminated was rejected on the basis that it was a matter for the jury (S/U p206). Clearly the Summing Up and submissions of counsel were meant to encompass the other material said to have been consumed by Mr Catt, as well as the mandarine.

After Mr Catt had left the section 12 hearing and not subsequently recalled, a number of pages of transcribed evidence given during the committal proceedings in the Roseanne Catt trial were admitted into evidence. Included was H.Ex AN, being page 374 of Mr Catt's evidence

in re-examination. He there confirmed that he had gone to the Family Law Court on Friday, 4 August and that Mr Newell had driven him down to the court again on Monday, 7 August. He was then asked:

Q. I'll put a general question, prior to going to the family court on either of those days, did you go anywhere near your business or did you see your wife?

A. No.

The above evidence is of course not fresh in the established sense of the term. It was clearly available to counsel at the trial. Nor was Mr Catt given an opportunity to give any explanation as to this apparent inconsistency with his evidence at the section 12 hearing.

I have already referred to Mr Newell's evidence of the improbability of his not warning Mr Catt before going into the office not to eat or drink anything. There i I have already referred to Mr Newell's evidence of the improbability of his not warning Mr Catt before going into the office not to eat or drink anything. There is also yet to be canvassed, evidence of Mr Fellows (see paras. 395-402), in light of which I am of the view that there is credible fresh evidence which leads me to the conclusion that I am unable to accept the evidence of either Mr Catt or Mr Newell on the issue of the mandarine, etc.

Before dealing with Mr Fellows' evidence, I turn first to evidence as to who had access to the office refrigerator.

ACCESS TO THE OFFICE REFRIGERATOR

Evidence was given at the trial as to who may have had access to the refrigerator from which, on 30 July, Mr Newell had removed the milk and orange juice. On the Crown's case there was an obvious danger that contaminated edibles, including liquids, left in the refrigerator

might have been consumed by a person or persons other than Mr Catt, posing a risk of detection for Ms Catt if she had followed a practice of lacing or spiking Mr Catt's edibles and more particularly his fluids.

Much of the significance of this evidence has disappeared with the verdict of the jury as to Count 5. It is necessarily implicit in the verdict of guilty of an attempt that the jury were not satisfied beyond reasonable doubt that Ms Catt had succeeded in having Mr Catt take an overdose of Lithium between the amended dates charged in the indictment namely 1 May 1989 to 31 July 1989. The central issue for the jury on this charge must have narrowed to the question whether Ms Catt had put the substances into the milk and orange juice before Mr Newell removed them on 30 July 1989. According to Mr Catt's statement to Det Sgt Thomas of 7 August 1989 (H.Ex B), this could only have been between 27-30 July 1989.
There were only two working days, 27 and 28 July, available in which Ms Catt might have contaminated the liquids with the prescribed medications if one of the objects was to embarrass Mr Catt at the Local Court proceedings on 31 July 1989.

Mr Barry Catt

Mr Catt said that he had moved across the road into the office premises on 23 May 1989 and had remained there until he left 2-8 Cornwall Street following the orders of the Family Law Court on 8 August 1989. He said that Ms Catt was at the office on Thursday and Friday, 27-28 July. She also had key access to the office which left open Saturday and Sunday as possibilities.

Mr Catt also claimed to Det Sgt Thomas that for the three months prior to 7 August 1989, he had not had any of his staff come into the office for morning tea. Since then, to his knowledge, he was the only one who had used the milk from

the refrigerator (H.Ex B, Q&A 33-34).

Ms Faye Klarenbeek

At the section 12 hearing Ms Klarenbeek, Ms Catt's sister, gave evidence of visits to 2-8 Cornwall Street for periods of up to three weeks at various times during 1989. She said that she often had morning tea or a meal at the office premises and saw no signs of anyone being restricted as to the use of the contents of the refrigerator. She did not however specify having been at 2-8 Cornwall Street at the end of July 1989 (H/T p1714-5). No satisfactory explanation was given as to why she was not called at the trial (H/T p1721).

Ms Joy McGregor

Ms McGregor, another sister of Ms Catt, also spoke of visits to 2-8 Cornwall Street. She said she had observed the availability of milk and other edibles. She said she had cups of coffee made with milk from the refrigerator and no-one had ever suggested that she should not consume things kept in the refrigerator (H/T p1733-5).
She claimed as an explanation for not giving evidence at the trial of Ms Catt that she was frightened of Mr Thomas because when she visited the court during the trial he had threatened her (H/T p1737). She spoke to no-one in authority about the alleged threat (H/T p1744). Again I find that no convincing explanation has been offered as to why she was not called at the trial. In any event, neither her evidence nor Ms Klarenbeek's cover the crucial period in question, namely 27-30 July 1989.

Mr Peter Bridge

As a full-time employee at the workshop, no doubt Mr Bridge might have given, if called at Roseanne Catt's trial, evidence similar to that which he gave at the section 12 hearing,

namely, that he had been given no indication as to the danger of consuming anything from the refrigerator, and that the practice was for employees to have morning tea in the office (H/T p1655).

Although he was not specifically asked about the relevant period 27-30 July, it may be assumed that he would have been able to give evidence of access to the refrigerator specifically in relation to working days in that period because of his status as a full-time employee.

Her Honour regarded Mr Bridge as a competent and compellable witness although in effect an alleged accomplice with Ms Catt in the giving of allegedly false evidence at the private prosecution instituted by her arising out of the "rock" incident. He was also effectively her alleged accomplice in relation to the alleged assault with the rock. Her Honour gave the jury a Jones v Dunkel type direction as to the failure of the accused to call Mr Bridge in her case (S/U p31-32).

No ground of appeal was taken in 1993 as to the course adopted by her Honour. Mr Bridge said he made himself available to be called at the trial if required having been asked to wait outside the court room in case he was needed. Any evidence he may have given was subject to his right to claim privilege from self-incrimination but I can see no reasonable basis for such a claim in respect of the availability of edibles from the refrigerator. I do not regard his evidence as fresh.

Mr Graeme Fellows

Mr Fellows gave evidence of events he claimed occurred from about 1993, when he had met Mr Catt and had done some work for him mowing lawns and driving Mr Catt about. He said that on an occasion about one month after he commenced this work, Mr Catt had told him that

he had set Ms Catt up for "a big fall".

He said Mr Catt had told him, apparently on another occasion but associated with the last-mentioned statement that "they put some tablets in some milk and sent it out to Adrian Newell's farm house and they kept them in a fridge out there....and he said a detective from Taree went out and picked the milk up and took it to a lab to get tested" (H/T p1076). Mr Fellows said that he did not know Ms Catt and had never heard about her trial or what had happened in Taree.

Mr Catt according to Mr Fellows also said words to the effect, "What we done it was done so well", and expressed a desire to "work over" Ms Catt's son because "how do you think she feels whilst she Mr Catt according to Mr Fellows also said words to the effect, "What we done it was done so well", and expressed a desire to "work over" Ms Catt's son because "how do you think she feels whilst she's in gaol and her son gets worked over" (H/T p1077).

Mr Fellows also gave evidence of a severe physical beating that he had received at the hands of the brother of Mr James Morris, Mr Paul Morris (not called), in the presence of and apparently with at least the tacit approval of Mr Catt. He said that the assault had continued until Mr Catt had intervened saying "that's enough".

Mr Fellows explained that he did not report to the police who had been involved because he claimed to have been impliedly threatened by Mr Catt as he and Mr Paul Morris had left Mr Fellows house where the assault allegedly took place (H/T p1078-9). He did claim to have reported the matter to named police officers in about 1999 or 2000, although without nominating the alleged perpetrators (H/T p1080-1).
To have volunteered what he gave in evidence may have been regarded as inconsistent with his claim not to know of the details of the

Roseanne Catt trial and he may not have recognised the significance of what he claims Mr Catt said when making the affidavits.

Clearly of course Mr Fellow's credibility is suspect in that he may be motivated by ill-will towards Mr Catt. When placed, however, in the context of other evidence, it brings me to the view that, notwithstanding that Mr Fellow's credit may be subject to attack, the existence of this fresh evidence is sufficiently credible and material to be taken into consideration on the question whether there may have been a miscarriage of justice at least so far as Count 5 is concerned.

MR PETER CAESAR AND MS LEANNE CHEERS

The evidence of Mr Fellows also gains a degree of support when considered in the different context of other fresh evidence given at the section 12 hearing by Mr Caesar and Ms Cheers as to Mr Thomas on the issue of the collusive arrangement asserted on behalf of Ms Catt at her trial, said to involve both Mr Catt and Det Sgt Thomas, as he then was.

Mr Caesar was an insurance loss adjuster when he first met Mr Thomas who was then in the process of resigning from the New South Wales police force. He said that Mr Thomas had moved to Brisbane and commenced working with Mr Caesar for the same firm.

He and Mr Thomas had an amicable employment and social relationship at first. During the course of it, Mr Caesar claimed that Mr Thomas had shown him files labelled "New South Wales Police" including one pertaining to Ms Catt (H/T p1565-8).

In 1991, after Mr Thomas had returned from Sydney where he had given evidence in the Roseanne Catt trial (he commenced his evidence on 27 June 1991, and the jury returned their verdicts on 11 September 1991), Mr Caesar

claimed that Mr Thomas had spoken to him about that case. Mr Thomas had described Ms Catt as the lowest form of a slut and said, "It's common knowledge that I planted the gun" (H/T p1568-9). This of course is more directly relevant to Count 9 rather than Count 5 and is dealt with also in that context later (para. 501). Mr Caesar said that in discussing the Roseanne Catt case with him, Mr Thomas had also described Mr Catt as "a mate".

Mr Caesar gave evidence of a workplace dispute between an employee, Ms Cheers and Mr Thomas which had led to litigation. He claimed that he had overheard an argument between Ms Cheers and Mr Thomas during the course of which Mr Thomas said words to the effect that he would "do Leanne in as he did Ms Catt, she was still rotting in gaol in Sydney" (H/T p1578). In cross-examination on the basis of a statement (H.Ex 30) made on 26 July 2001 to a detective sergeant of police then attached to the NSW Crown Solicitor's office, Mr Caesar conceded that Mr Thomas had not used words to the effect, "I planted the gun on her" but had said words to the effect, "There are things you have to do. This sheila was bad, and it had to be done".

Mr Caesar nevertheless insisted in evidence before me that Mr Thomas had "numerous times" said words to the effect that he had "planted" a gun on Ms Catt (H/T p1584). In an earlier part of the same statement, H.Ex 30, Mr Caesar is recorded as having said that Mr Thomas had said to him words to the effect that, "It' Mr Caesar nevertheless insisted in evidence before me that Mr Thomas had "numerous times" said words to the effect that he had "planted" a gun on Ms Catt (H/T p1584). In an earlier part of the same statement, H.Ex 30, Mr Caesar is recorded as having said that Mr Thomas had said to him words to the effect that, "It's common knowledge that I planted the gun on the bitch". Notwithstanding any apparent inconsistency, I am satisfied that the statement of 26 July 2001

(H.Ex 30) contains the substance of what Mr Caesar alleged in evidence Mr Thomas had said.

Mr Caesar was further cross-examined on a document, H.Ex 7, being a written memorandum by Mr Caesar to Mr Thomas in which Mr Caesar appears clearly enough to be suggesting to Mr Thomas that they should take steps dishonestly to exclude a joint venturer with them in a business enterprise from his money (H/T p1586-7).
Mr Caesar was also cross-examined on a file register kept by Mr Thomas. Mr Caesar said that after Mr Thomas had left he had found the register in a communal office, not Mr Thomas' personal office. Mr Caesar agreed that he had provided a Four Corners television programme, in which adverse criticism had been made of Mr Thomas, with material apparently from the file register (H/T p1588).

Mr Caesar agreed in cross-examination that he had access to a diary containing details of mutual clients which he had supplied to Ms Catt after her release from prison. He agreed in effect that he would do anything to get back at Mr Thomas. He denied, however, making false allegations against Mr Thomas.

Mr Caesar agreed that he had sent material to some of Mr Thomas' clients, samples of which are contained in H.Ex 10 being newspaper clippings of 20 and 21 October 2000 relating to the Four Corners television programme in which Mr Thomas is associated with dishonest and criminal allegations relating to claims of insured persons. He agreed that he had distributed this material "just to get back at" Mr Thomas (H/T p1590).

Mr Caesar said that he had been prosecuted for fraud in Queensland at the instigation of Mr Thomas and was ultimately acquitted of these matters (see Pt H.Ex 8).
MR PETER THOMAS

Mr Thomas agreed in evidence that he had brought with him to Queensland files relating to New South Wales police matters but claimed they were his own files. He agreed that he had a copy of a file relating to Ms Catt and "some associated papers".

He said that there had been media coverage of the Roseanne Catt trial and conversations about the trial among office staff in Queensland "on a daily basis". He denied describing Mr Catt as a "mate" as well as the allegations of admissions made to Mr Caesar about planting a gun and other matters relied on by Ms Catt (H/T p179-83).

MS LEANNE CHEERS

Ms Cheers spoke of difficulties she had had with Mr Thomas and of speaking to him about a claim which she had made for compensation in respect of alleged sexual harassment and unfair dismissal.

She gave evidence of speaking to Mr Caesar about the claim after she had initiated it. Mr Thomas had come into the room and said words to the effect that if she proceeded with the sexual harassment case "that he would set me up like he did that bitch" (H/T p2365).

Ms Cheers said that on another occasion, or occasions, she had overheard Mr Thomas speak to Mr Caesar about Ms Catt as a person involved in a case in New South Wales and who was in gaol (H/T p2366-7).

EVIDENCE OF THE CATT CHILDREN AS TO COUNT 5

The Crown's case at the trial on the question whether Ms Catt had administered Lithium and Rivotril overdoses to Mr Catt was wholly circumstantial.

The only suggestion that it may have been the Catt children who put the substances in the milk and orange juice was to the effect that

this was left to the jury as an hypothesis consistent with the innocence of Ms Catt to be excluded by the Crown (S/U p192-3).

It is clear from the jury's verdict that the jury did exclude any such hypothesis. That the children had done so was never part of the Crown's case. It follows therefore that although the jury rejected the children as being witnesses of truth as to the sexual assault allegations and other matters, that conclusion cannot extend to the evidence at the section 12 hearing that they had, with the connivance and at the direction of Ms Catt, put medications into Mr Catt's liquids.

All four of them gave evidence at the section 12 hearing to the effect that Ms Catt, by herself and by directions to them, had been instrumental in administering overdoses of his prescribed medications, Lithium and Rivotril, to Mr Catt principally by putting them in his liquids but also in his prepared meals.

It is unnecessary to further canvass the details of this evidence of the children. The Crown submits on the basis of it that it now has an overwhelming case as to Count 5.

CONCLUSIONS AS TO CATT CHILDREN'S EVIDENCE ON COUNT 5

Since no jury has been presented with the version each of the four Catt children now gives, there is no jury verdict on this issue which might inhibit me in assessing their credibility on this issue, and either accepting or rejecting their evidence accordingly. The evidence they now give as to Count 5 is not consistent with a jury verdict and it was never part of the Crown's case that they had participated, at the direction of Ms Catt or otherwise, in contaminating Mr Catt's liquids.

As to Count 5, I find that I am unable to place any reliance on them as witnesses. I cannot overlook the fact that they have given evidence

on oath which has been rejected by two juries. All four of them gave evidence, and persisted in false accounts, which involved most serious allegations against their natural father, at Barry Catt's trial. In addition, to FACS officers, police officers and others, they have given versions out of court designed to bring about his conviction of very serious offences which versions they now swear to be false.

Mr Molomby of counsel also submits that when compared with the documentary evidence of the quantities of Lithium and Rivotril dispensed during the relevant period, the evidence of the Catt children becomes objectively suspect. On Mr Molomby's analysis, with which I am in agreement, there was not enough of either substance to account for the expert evidence given as to the quantities required to reach the level of contamination found by the Government Analysts in August 1989 (see also Mr Catt's blood Lithium levels as indicated in Pt H.Ex KKK).

If the Crown were now to rely in a trial on the direct evidence of these witnesses as to Count 5, it is at least doubtful whether a warning in terms of s165 of the Evidence Act 1995 would be sufficient to deal with the question of their credibility. A direction that no effect at all should be given to their evidence might be required (Davies & Cody v The Queen (1937) 57 CLR 170, 183-5).

THE SUMMING UP AS TO COUNT 5

Her Honour drew to the attention of the jury that the Crown's case as to Count 5 depended upon evidence of motive and opportunity, which included access to the refrigerator and to the combination of drugs, Lithium and Rivotril.

Her Honour directed the jury that, on the evidence, they might find that Ms Catt had access to both drugs and to the milk and orange juice in the refrigerator.

Her Honour reminded the jury of the evidence of Det Paget as to the medication in the black handbag, as indicating that as at 24 August 1987, and therefore by inference as at 27-30 July 1987, Ms Catt is likely to have had access to that combination of drugs.

Her Honour then canvassed evidence that whilst the liquids in bulk and in the specimen containers given to Dr Sandfield had been tested by the Government Analyst Laboratories for Lithium on 15 August 1989, the Clonazepam test had not been done until 29 August 1989.

Her Honour then posed as a rhetorical question for the jury, "What happened between 15 August and 29 August to lead the police to suggest or request that they be reanalysed for the presence of Clonazepam" (S/U p134).

In my respectful view the evidence now available does not establish such a separate suggestion or request. Clearly the test for Clonazepam was not done until fourteen days after the test for Lithium but there is no evidence that this was pursuant to a separate and distinct request apart from what came from Det Sgt Thomas to that effect at the section 12 hearing. The initial request to the Newcastle Hospital was for a test for both substances. The note on the reverse side of H.Ex 12 suggests the request to the Government Analytical Laboratories was initially for the testing of both substances (paras. 295-296).

Her Honour then said to the jury: "It is a matter for you members of the jury, but you might think that there is only one really coherent explanation for this, and that is that there was something found during the search on 24 August. So you would be entitled to find this sequence of events within the Analyst's Department as constituting quite powerful independent evidence in support of the police version as to the finding of these two bottles

during the course of the search Her Honour then said to the jury: "It is a matter for you members of the jury, but you might think that there is only one really coherent explanation for this, and that is that there was something found during the search on 24 August. So you would be entitled to find this sequence of events within the Analyst's Department as constituting quite powerful independent evidence in support of the police version as to the finding of these two bottles during the course of the search" (S/U p134 - emphasis added).
Her Honour posed as another rhetorical question for the jury, on the assumption that it was the police, and in particular Det Sgt Thomas, who had put the Lithium and Clonazepam into the liquids before they went to the analyst, "Why did they only request initially that the drugs be analysed for Lithium?" (S/U p134).

Her Honour then posed a similar question on the assumption that it was Mr Newell who had put the substances into the liquids and said, "You may think that the fact that there was a later request for analysis which led to the finding of Clonazepam and that there is no suggestion that it was known that Clonazepam was in these liquids - known by anybody other than the person who put the drugs into the liquid that Clonazepam was in there - that this can be taken by you as a significant matter.....You would be entitled to take this as strong evidence supporting the police version that they did, indeed, find both Rivotril and Lithicarb during the course of this search. When you really think of the sequence of events, you might find it difficult to come up with any other really coherent explanation which accounts for the sequence of events so far as the request for analysis and the results of analysis are concerned . That, of course, is entirely a matter for you" (S/U p136 - emphasis added).

After an overnight adjournment and at the

request of senior counsel for Ms Catt, her Honour posed another possible scenario, namely, that the Rivotril and Clonazepam were not found in the handbag "but somewhere else and Det Paget lied about finding them in the purse. But nevertheless it was close enough for the police to be alerted to the possibility of Clonazepam, and therefore to have the liquids re-analysed some days later" (S/U p150).

Her Honour then said, "You may think that what the evidence does do is effectively eliminate Adrian Newell as a person who could have put the drugs into the liquids, at least if he had done so without telling the police. Because the one thing that that scenario means is that on 24 August, the day of the search, the police were not to know that there was Clonazepam in those liquids. Accordingly had it been Adrian Newell who had done it the police were not to know there were two drugs as opposed to the one, during the course of their search. Because nobody knew at that stage, apart from the person who put the drugs into the liquids, that the liquids contained Clonazepam Her Honour then said, "You may think that what the evidence does do is effectively eliminate Adrian Newell as a person who could have put the drugs into the liquids, at least if he had done so without telling the police. Because the one thing that that scenario means is that on 24 August, the day of the search, the police were not to know that there was Clonazepam in those liquids. Accordingly had it been Adrian Newell who had done it the police were not to know there were two drugs as opposed to the one, during the course of their search. Because nobody knew at that stage, apart from the person who put the drugs into the liquids, that the liquids contained Clonazepam" (S/U p150 - emphasis added).
As a result of evidence given at the section 12 hearing, however, there is now another reasonable hypothesis not left for the jury's consideration. Mr Newell, on his own evidence, knew before 30 July 1989 of the significance a

combination of Lithium Carbonate and Clonazepam might have. Mr Catt said that he kept his medication in the same office as the refrigerator that contained the milk and orange juice. It is clear that Mr Newell, therefore, on entering the office had access to at least Lithium, and if the container of Rivotril was there, and not at 1 Cornwall Street, that medication too.

As to Rivotril, if the only container dispensed to Mr Catt was that delivered by Mr Newell to the Crown, Det Paget may have been lying when he told the jury that he had found another container of Rivotril in a black handbag on 24 August 1989 in a drawer in the main bedroom at 1 Cornwall Street (see paras. 323-326).

I do not accept Mr Newell's evidence that he found the container of Rivotril at 1 Cornwall Street on 5 September 1989. The evidence does not exclude that the Rivotril may have been kept at the same place as Mr Catt said he was in the habit of keeping his other medication, at 2-8 Cornwall Street.

Additionally I find that Mr Newell was motivated in favour of Mr Catt and antagonistically towards Ms Catt.

The evidence now raises as reasonably possible the hypothesis that Mr Newell, having both opportunity and motive to put both substances into the liquids, may have done so on or about 30 July 1989, or at any event before he gave the bulk of the liquids to Det Sgt Thomas on 31 July 1989.

There is a further reasonable hypothesis now available on the evidence, namely that Det Sgt Thomas, prior to 24 August 1989, was also aware of the significance of finding both Lithium and Rivotril in the possession of Ms Catt. He spoke to Mr Newell on 29 July 1989, Mr Newell already having obtained advice relating to the combination of drugs from Dr Sandfield. He

claims to have told Mr Newell on 29 July 1989 to take the liquids from the refrigerator.

Having regard to the investigative task on which Mr Newell and Mr Thomas were jointly engaged, I am unable to conclude that Mr Thomas did not know, when the substances were first submitted for analysis on 10 August 1989, of the significance of Lithium and Rivotril in combination. Det Sgt Thomas had also spoken not only to Mr Newell but also to Mr Dickeson to whom the initial request for testing for both substances had been made. Although Mr Dickeson was not called, I find it is likely that he would have made known to Det Sgt Thomas the terms of the request for analysis made by Dr Sandfield since it was to Det Sgt Thomas that the specimen containers were given to take to the government analysts in order that that request might be fully complied with.
Even if, however, Det Sgt Thomas did not know about the significance of Lithium and Rivotril in combination before 24 August 1989, there was sufficient time for both he and Det Paget to have concocted a version of the finding of both those medications in a black handbag at 1 Cornwall Street after Mr Sheehy had published the result of his analysis as to Clonazepam and before Det Paget gave evidence at the committal proceedings in May-July 1990. There is evidence that Det Sgt Thomas had a propensity for conduct of this kind.

This latter hypothesis would account for the lack of any reference to Lithium or Rivotril in the record of property seized, H.Ex HH, and the lack of any reference to the finding of any such substance in the recorded interview of Ms Catt of 24 August 1989 (Pt H.Ex UUU). It would also account for Det Paget's denial on 12 March 1990 of having searched the main bedroom at 1 Cornwall Street on 24 August 1989 and of having taken possession of a black handbag and medication (H.Ex ZZZZZ, Q&A 92, 133-4)."

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Davidson ADCJ expressed the following conclusion with respect to count 5:

"CONCLUSIONS AS TO COUNT 5

It is likely that Det Sgt Thomas knew on 29 July 1989 that Mr Newell was going to collect from office premises at 2-8 Cornwall Street specimens of Mr Catt's consumables in order that they might be subjected to analysis (see paras. 279-287).

Mr Newell's evidence to the effect that he did not tell Det Sgt Thomas what he intended to do on 30 July 1989 at the office premises at 2-8 Cornwall Street is so highly improbable as to be unacceptable and I reject it (see para. 280).

It is reasonably possible that on or before 31 July 1989, and probably on 29 July 1989, Mr Newell informed Det Sgt Thomas of the advice of Dr Sandfield to the effect that the erratic behaviour being exhibited by Mr Catt may have been the result of overdoses of Lithium and a drug such as Rivotril in combination.

Mr Newell had both a motive and an opportunity to contaminate the substances he removed from Mr Catt's refrigerator on 30 July 1989 before they were submitted for analysis.

Mr Newell was motivated by antipathy towards Ms Catt and by sympathy towards Mr Catt to such an extent that he may have himself contaminated the liquids removed by him from Mr Catt's refrigerator on 30 July 1989 before they were submitted for analysis.
It is reasonably possible that the request for analysis, of liquids removed by Mr Newell on 30 July 1989, for the presence of both Lithicarb and Clonazepam was made to the Government Analytical Laboratories when the milk and orange juice were delivered to the Laboratories on 10 August 1989.

It is reasonably possible that the request for analysis in respect of both substances referred to in para. 454 above was made by or with the knowledge of Det Sgt Thomas, acquired prior to 24 August 1989.

Contrary to his sworn evidence to that effect it is reasonably possible that Det Paget may not have found containers of Lithium and Rivotril in a black handbag in a drawer in the main bedroom at 1 Cornwall Street on 24 August 1989.

The only container of Rivotril likely to have been dispensed to Mr Catt in existence as at 24 August 1989 was that produced by Mr Newell to Crown prosecuting authorities on 14 May 1991 at the trial of Roseanne Catt (see para. 358).

It is reasonably possible that Mr Newell and Mr Catt did not find the container of Rivotril last-mentioned at 1 Cornwall Street as Mr Newell claims.

The evidence of both Mr Newell and Mr Catt to the effect that Mr Catt had consumed a mandarine and other consumables from the refrigerator at 2-8 Cornwall Street on 6 August 1989 is not credible and is not accepted by me.

The evidence of each of the four Catt children as to Ms Catt putting medication into Mr Catt's food and liquids and as to them doing so at the direction of Ms Catt so lacks credibility that it is not accepted by me." The evidence of each of the four Catt children as to Ms Catt putting medication into Mr Catt's food and liquids and as to them doing so at the direction of Ms Catt so lacks credibility that it is not accepted by me."

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I have carefully considered the findings and conclusions of Davidson ADCJ as to count 5. To

my mind, his Honour's conclusions should be accepted. In particular, having regard to the manner in which her Honour left the issue of Mr Newell's involvement to the jury, the evidence which is now available requires a reconsideration of the jury's verdict on count 5. It is also relevant to the issue of the appellant's credit, which is, of course, relevant to all of the counts having regard to the appellant's allegation of a conspiracy against her.