

New South Wales Court of Criminal Appeal
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NEW SOUTH WALES COURT OF CRIMINAL APPEAL

CITATION: Regina v CATT [2005] NSWCCA 279

FILE NUMBER(S):

60487/01

HEARING DATE(S): 27 October 2004

JUDGMENT DATE: 17/08/2005

PARTIES:

The Crown

Roseanne Catt

JUDGMENT OF: McClellan AJA Adams J Smart AJ

LOWER COURT JURISDICTION: Not Applicable

LOWER COURT FILE NUMBER(S): Not Applicable

LOWER COURT JUDICIAL OFFICER: Not Applicable

COUNSEL:

W G Roser (Crown)

T Molomby SC (Appellant)

SOLICITORS:

Director of Public Prosecutions (Crown)

McGowan Lawyers (Appellant)

CATCHWORDS:

CRIMINAL LAW

appeal against conviction pursuant to s
474C(1)(b) of the Crimes Act 1900

whether the convictions were the result of a miscarriage of justice

whether because of fresh evidence the conviction in relation to each count must be quashed

LEGISLATION CITED:

Crimes Act 1900

Crimes (Sentencing Procedure) Act 1999

Criminal Appeal Act 1912

Criminal Procedure Act 1986

Firearms and Dangerous Weapons Act 1973

DECISION:

1. Uphold the appeal in relation to counts 1, 2, 5, 6, 7 and 9 and quash each conviction
2. Enter a verdict of acquittal on count 9
3. Order that there be a new trial in relation to counts 1, 2, 5, 6 and 7
4. Dismiss the appeal in relation to counts 3 and 4
5. The appellant's bail is to continue
6. Reserve liberty to apply

JUDGMENT:

IN THE COURT OF

CRIMINAL APPEAL

60487/01

McCLELLAN AJA

ADAMS J

SMART AJ

WEDNESDAY, 17 AUGUST 2005

REGINA v Roseanne CATT

JUDGMENT

1

McCLELLAN AJA : The appellant, Ms Roseanne Catt, petitioned the Governor pursuant to s 474B of the Crimes Act 1900 seeking a review of her conviction on eight counts. The Attorney-General, after considering the petition, referred the case to the Court of Criminal Appeal pursuant to s 474C(1)(b) of the Act. That section provides for the referral of the "whole case" to the Court of Criminal Appeal "to be dealt with as an appeal under the Criminal Appeal Act 1912.

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After the case had been referred the appellant filed a notice of appeal which was subsequently amended. The amended notice identified the following grounds of appeal.

1. "

1. The convictions of the appellant on eight counts of the indictment presented against her are the result of miscarriage of justice which has two separate but related components:
(a) The former detective in charge of the case, Peter Thomas was at all relevant times a corrupt policeman, who was prepared to and did manufacture and invent the evidence upon which the convictions were based. The propensity of Peter Thomas towards corruption and the perversion of justice has been repeatedly demonstrated in other matters occurring both before and after the trial of the appellant;

(b) The whole course of the committal and trial

process leading up to the convictions of the appellant was contaminated by the fact of the multiplicity of the charges being presented against the appellant at the same time with resulting unfair prejudice to her.

2. In relation to each of the charges on which the appellant was convicted, the conviction is, having regard to the evidence at the trial and the evidence now available, unreasonable and should not be permitted to stand

3. There is fresh evidence capable of establishing, taken alone or in conjunction with other evidence, the reasonable possibility that:

(a) the witness Marie Whalen was so unreliable as not to be accepted on contested matters.

(b) 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.

(c) 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.

(d) 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.

(e) Mr Newell was motivated by antipathy towards Ms Catt and by sympathy towards Mr Catt to such an extent that he himself contaminated the liquids removed by him from Mr Catt's refrigerator on 30 July 1989 before they were submitted for analysis.

(f) The request for analysis 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.

(g) The request for analysis in respect of both substances was made by or with the knowledge of Det Sgt Thomas prior to 24 August 1989.

(h) Contrary to his sworn evidence to that effect, Det Paget did not find containers of Lithium and Rivotril in a black handbag in a drawer in the main bedroom at 2 Cornwall Street on 24 August 1989.

(j) The only container of Rivotril 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.

(k) Mr Newell and Mr Catt did not find the container of Rivotril last-mentioned at 1 Cornwall Street on 5 September 1989 as Mr Newell claims.

(l) Det Sgt Thomas had an improper motive for securing the conviction of Ms Catt and of doing so by means which include the giving, or procuring the giving of evidence known to be untrue or not believed to be true.

(m) Det Sgt Thomas had a propensity to act in the way referred to in (l) above.

(n) Det Sgt Thomas put the revolver in the drawer where it was found by Const Cottee on 24 August 1989 in order to incriminate Ms Catt.

(o) Det Sgt Thomas used improper methods which were calculated to induce information or evidence to be given by potential witnesses, regardless of its truth, and that in doing so Det Sgt Thomas was motivated by bias against Ms Catt.

(p) Det Sgt Thomas offered an inducement to Ms Crista Van der Merwe to give evidence which was false or not believed to be true in order to secure the conviction of Mr Ramon Bracamonte of a criminal offence.

(q) Det Sgt Thomas gave false evidence before a magistrate in relation to the investigation of Mr Ramon Bracamonte and Ms Crista Van der Merwe.

(r) Mr Thomas, as an insurance investigator, offered a monetary bribe to a potential witness to give evidence which was false or not believed to be true in relation to the investigation of one Ms Margaret Nagy in connection with a fire.

(s) Det Sgt Thomas brought improper pressure to bear on Mr Golds to give evidence in a criminal prosecution involving Ms Catt irrespective of considerations as to the truth or falsity of that evidence."

3

This Court is required by s 474L of the Crimes Act to deal with the case in the same way as if "the convicted person had appealed against the conviction" under the Criminal Appeal Act . Acting pursuant to that Act this Court ordered that the factual issues in the appeal be remitted to a judge of a court of trial. Section 12(2) of the Act provides that such a remitter may be made for "determination" of the relevant issues.

4

For the purpose of the remitter the District Court was appointed as the court of trial and Davidson ADCJ conducted a hearing and provided a "judgment on Remitter by the Court of Criminal Appeal under section 12(2) Criminal Appeal Act 1912 for Determination of Factual

Issues." Davidson ADCJ states in his judgment that he has proceeded on the basis that the referral of the "whole case" to the Court of Criminal Appeal throws open factual issues relating to both substantive questions of guilt and also whether there may have been a miscarriage of justice due to a failure of the trial process or procedure (see Greg James J "Report pursuant to Part 13A of the Crimes Act 1900 into the conviction of Ronald James Suey" 6 September 2003, paras 5-19-5.2A; Eastman v DPP (ACT) (2003) 77 ALJR 1122).

5

It has been necessary in order to explain the conclusion to which I have come to incorporate significant portions of the judgment of Davidson ADCJ in these reasons.

Part 1 - The appellant's trial, conviction and appeal in 1993

6

The appellant was tried on an indictment containing nine counts. The trial commenced on 13 May 1991 and verdicts were returned on 11 September 1991. She was convicted as charged on seven of the counts but acquitted on one, Count 8. On Count 5, the jury returned a verdict of guilty of attempt.

The indictment was in the following terms, omitting formal parts:

Count 1 ("The rock incident"): That Roseanne Catt on 2 May 1988 at Taree in the State of New South Wales maliciously did wound Barry Catt (s 35 Crimes Act).

Count 2 ("The perjury count"): That Roseanne Catt on 3 July 1989 at Taree in the State of New South Wales in the Local Court before Mr G P O'Keefe, Magistrate on an occasion when truth of the same was material did knowingly and

willingly falsely swear in substance, as follows, that is to say, that she, Roseanne Catt, at no time struck Barry Catt with a rock (this is the count as amended by consent on 28 August 1991: s327 Crimes Act).

Count 3 ("The Swan's Crossing incident"): That Roseanne Catt between 2 March and 30 March 1989 at Swan's Crossing in the State of New South Wales, maliciously did wound Barry Catt (s 35 Crimes Act).

Count 4 ("The cricket bat/eucalyptus oil incident"): That Roseanne Catt on 5 May 1989 at Taree in the State of New South Wales did assault Barry Catt, thereby occasioning to him actual bodily harm (s 59 Crimes Act).

Count 5 ("The Lithium incident"): That Roseanne Catt between 1 May and 31 July 1989 at Taree in the State of New South Wales maliciously did cause to be taken by Barry Catt a noxious thing, namely, Lithium and thereby did endanger the life of the said Barry Catt (s 39 Crimes Act).

The jury acquitted Ms Catt on this count but convicted her of the alternative, i.e. attempting to cause to be taken by Mr Catt a noxious thing, namely Lithium with intent to injure Mr Catt (ss 40, 41, 344A and 427 Crimes Act 1900. See now s 162 Criminal Procedure Act 1986).

Count 6 ("Soliciting James Morris"): That Roseanne Catt on 28 July 1989 at Taree in the State of New South Wales did solicit James Morris to murder Barry Catt (s 26 Crimes Act).

Count 7 ("Soliciting Vernon Taylor"): That Roseanne Catt between 15 July and 16 August 1989 at Taree in the State of New South Wales did solicit Vernon Taylor to murder Barry Catt (s 26 Crimes Act).

Count 8 ("Encouraging Lesley O'Brien"): That

Roseanne Catt on or about 24 June 1989 at Taree in the State of New South Wales did encourage Lesley O'Brien to murder Barry Catt (s 26 Crimes Act - acquitted).

Count 9 ("Possessing a pistol"): That Roseanne Catt on or about the 24 August 1989 at Taree in the State of New South Wales did have in her possession a pistol, namely a Hopkins and Alan .32 calibre revolver, she then not being a holder of a licence for such pistol (s 25(1) Firearms and Dangerous Weapons Act 1973).

7

On 18 October 1991 the appellant was sentenced by Mathews J to terms of imprisonment as follows:

On Counts 1, 3 and 4: concurrent sentences comprising a fixed term of 15 months to commence on 11 September 1991 (the date of verdict) and expiring on 10 December 1992;

On Count 2: a fixed term of 3 years commencing on 11 December 1992 and expiring on 10 December 1995;

On Count 5: a fixed term of 3 years commencing on 11 December 1995 and expiring on 10 December 1998;

On Count 6: a fixed term of 3 years and 6 months commencing on 11 December 1995 and expiring on 10 June 1999;

On Count 7: a minimum term of 6 years commencing on 11 December 1995 and expiring on 10 December 2001 with an additional term of 2 years from 11 December 2001 expiring on 10 December 2003;

On Count 9: a fixed term of 12 months commencing on 11 September 1991 and expiring on 10 September 1992;

8

The earliest date on which the appellant became eligible for parole was 10 December 2001.

9

On 6 August 2001 the appellant was released on bail pending her appeal. She has four months of her sentence still to serve.

The 1993 appeal

10

In 1993 the appellant appealed against her convictions and sentence. The appeals were dismissed on 10 June 1993: (R v Roseanne Catt (1993) 68 A Crim R 189). The grounds of appeal were as follows:

Ground 1: The learned trial judge erred in admitting evidence of the finding of certain property at the home of the appellant upon the execution of a search warrant on 24 August 1989 (sep. jdgt. of 9 May 1991 and 2 June 1991).
Abandoned;

Ground 2: Her Honour erred in admitting evidence of conversation said to have occurred between the appellant and the witness Shane Golds towards the end of 1988 (sep. jdgt. of 25 September 1991);

Ground 3: Her Honour erred in admitting evidence of the witness Amanda Joy Taylor concerning the appellant's behaviour on an occasion in March 1988 (sep. jdgt. of 17 June 1991);

Ground 4: Her Honour erred in admitting evidence of the witness Charon (sic) Lee Napper suggesting that in April 1988 the appellant had forged certain documents (sep. jdgt. of 24 June 1991);

Ground 5: Her Honour erred in allowing evidence, in relation to the fifth count of the effect of Clonazepam (sep. jdgt. of 26 June 1991; and see T/T p1081-2). Abandoned;

Ground 6: Her Honour erred in declining to discharge the jury upon application made after certain matters were put to the appellant in cross-examination (sep. jdgt. of 2 August 1991);

Ground 7: Her Honour erred in directing that the trial be conducted upon the basis that the truth of the children's allegation that the witness Barry Robert Catt had assaulted them sexually was not a matter for the jury to determine (sep. jdgt. of 27 August 1991; S/U p175-6, 206FF);

Ground 8: (a) There is fresh evidence bearing upon the credibility of the witness Peter Thomas (T1745ff.); (b) the unavailability of this evidence at the trial has caused a miscarriage of justice. Abandoned;

Ground 9: The verdicts of guilty are unsafe and unsatisfactory.

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