

Part 4 - An outline of the facts in relation to each count and the appellant's defence

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It is convenient to summarise the nature of the evidence tendered at the trial on each count. I am indebted to the judgment of Sheller JA in the earlier appeal for a concise statement of the relevant material.

First charge in the indictment - "the rock incident"

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For reasons which did not emerge at the trial there was ill feeling between the appellant and Mary Warwick, Barry Catt's sister. On 2 May 1988 the appellant drove with her son, Peter Bridge, another apprentice at the panelbeating yard, Shane Golds, and the three older Catt children, Christopher, Sharon and Julie to Mary Warwick's house. According to both Shane Golds and Mary Warwick, on arrival the appellant abused Mrs Warwick claiming she had had sex with her own brother and that her two little girls were illegitimate. When Mary Warwick tried to close the security door the appellant slapped her on the face, took the keys from the security door and threw them into a rockery. The appellant and the others who had accompanied her there were back in her car when Barry Catt arrived in another vehicle. He had realised that something was amiss when he found that two apprentices and the appellant were absent from the panelbeating yard.

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Barry Catt approached the appellant in her car, said something to her and turned the key to the off position. She yelled at him and hit him with the back of her hand. He retaliated in the same way. He then walked away and she followed him and started to pummel him on his back. He

hit her again on the cheek, knocking her glasses off, and told her to wake up to herself. The Crown alleged that Shane Golds and Peter Bridge at the appellant's instigation attacked Barry Catt who fell down on all fours. The appellant picked up a heavy rock and struck Barry Catt who gave evidence of feeling the rock hitting his back and his head and hearing the appellant say "I'll fucking kill you, you cunt." She then threw the rock down, called her group off and drove away.

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Barry Catt gave evidence that a neighbour called the police and took him to hospital where he had four stitches put into a gash on his head.

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The Crown case at the trial was supported by Shane Golds. He had at first supported the appellant's account of the incident. Indeed, on 3 July 1989 he gave evidence for the appellant in assault proceedings brought by her. At the trial he said that his evidence on that occasion was false. He said that later on the day of the rock incident there was a meeting at the appellant's home at which the appellant encouraged Shane Golds, Peter Bridge and the Catt children to make statements that what occurred was not that the appellant hit Barry Catt with the rock but rather that Mary Warwick did. They made such statements. His reason for giving false evidence he said, was that the appellant had told him what he must say and had threatened him with the loss of his job if he did not. He said he was scared of the appellant who asked him some time after the rock incident, "Do you need any money to knock Barry off and if you don't, do you know of anyone else who will?"

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The appellant's version of the incident given by her and each of the three children was that she had gone on Barry Catt's suggestion to visit Mary Warwick's house to sort out a disagreement which had arisen between them. She had the children with her rather than them being at school because Barry Catt had belted them the night before. The appellant claimed that it was Mary Warwick who was abusive, that no blows were struck between them and that they were on the verge of leaving when Barry Catt arrived and took the keys from her car and attacked her without provocation. The appellant alleged that Barry Catt was being restrained by the two boys when Mary Warwick picked up a rock from the rockery. She first tried to use the rock to strike at the appellant but missed. She then tried to hit the boys, but they ducked and the rock hit Barry Catt instead. The appellant denied that she had ever threatened Shane Golds or ever suggested that he give a false version of the events. The three older Catt children were called by the appellant and gave evidence supporting her version of events.

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In her remarks on sentence Mathews J said:

"The jury's finding that Roseanne Catt was guilty of malicious wounding in relation to this incident shows that it accepted the Crown version and rejected the version given by the defence. And it must be said that this was not a surprising outcome in the light of the conflicting versions given at different times by some of the defence witnesses."

Second charge in the indictment - "The perjury count"

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Immediately after the incident which formed the basis of the first charge, the appellant drove to the Taree Police Station and laid the

complaint of assault against Barry Catt which came on for hearing in the Taree Local Court on 3 July 1989. The appellant as complainant gave sworn evidence in which she described the incident in much the same terms as she did subsequently at the trial. The appellant was charged with committing perjury at Taree Local Court on 3 July 1989; s 327 of the Crimes Act. The appellant denied that what she said on oath at Taree Local Court about the rock incident was false.

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In her remarks on sentence Mathews J said:

"Her conviction in relation to this charge means that the jury accepted not only that her version of the events of 2 May was a false one, but that it was deliberately false."

Third charge in the indictment - "The Swans Crossing Incident"

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The Crown alleged that on 12 March 1989 the appellant and Barry Catt went for a picnic together at Swans Crossing. At one stage during the picnic they were lying in their swimming costumes on a rug drinking stout when the conversation turned to Mary Warwick. Barry Catt gave evidence that the appellant then became very angry and started to drive a knife she was using to cut lemons through the rug. Barry Catt told her to stop, to which she said words to the effect of "I'll fucking stab you too" and proceeded to prod him twice with the knife and then drove the knife into his left side just below his ribs. He quickly walked off and approached a man who was having a barbecue some distance away. The Crown called this man, Garry Jeffrey, who gave evidence that he had given Barry Catt a t-shirt to put over his bleeding wound. Meanwhile the appellant having loaded up the car drove up to Barry Catt and told him to

get in. He refused saying "No, you will stab me again." He then walked and hitchhiked home. Later that day the appellant bathed his wound and advised him it did not need stitching. The wound became infected. The Crown called evidence from Dr Goddard who came to the workshop as a customer and remembers Barry Catt showing him the wound.

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The appellant denied inviting Barry Catt to a picnic at Swans Crossing and testified that Barry Catt followed her to Port Macquarie on the weekend this incident occurred. She claimed she was lying on the ground at Swans Crossing when Barry Catt approached her and started stabbing the rug. She put her foot out and he fell backwards or onto his side. The appellant in evidence would not concede that Barry Catt had any injury at all that day. If he did she claimed to know nothing about it.

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At the trial more evidence was directed to what occurred the night before the Swans Crossing incident than to the incident itself. In particular the Crown alleged that the appellant had deliberately attempted to manipulate evidence which might otherwise be available for use against her and had attempted to persuade the proprietor of a motel, Janet Eslick, where she and Barry Catt had stayed on the previous night, 11 March, to say that she had stayed there alone. This was to support her version of events that she and Barry Catt had not gone to Swans Crossing together on 12 March, but rather that she had gone there alone and that he followed her and arrived unexpectedly. The appellant relied upon this additional evidence as showing that Barry Catt was unworthy of credibility and was being fed information by the police as to the details of the evidence during the course of the trial. In her remarks on sentence Mathews J said:

"The jury's verdict indicates that it accepted Barry Catt's evidence, and also, presumably, that of the motel proprietor. This raises serious questions about the prisoner's attempts to manipulate evidence which she feared might be used against her. This is not a matter which can be used in aggravation of sentence, but it certainly deprives her of any leniency by reason of contrition or remorse."

Fourth charge in the indictment - "the cricket bat/eucalyptus oil incident"

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The Crown alleged that on this occasion the appellant assaulted Barry Catt with a cricket bat. He gave evidence that at about 11 pm he was talking to some friends on the telephone in his office when the appellant intercepted the call by picking up the extension in the house. When she found out who it was he was talking to, she said "I don't want you talking to that slut." Barry Catt said he hung up on the appellant and continued talking. Within five minutes the appellant and his children appeared. The appellant grabbed the telephone.

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The Crown led evidence from the caller, Jan O'Brien, of her recollection of the appellant's suddenly coming onto the telephone and starting to abuse her. The appellant said what a sick man Barry Catt was and put Tony and then Christopher Catt on the line to tell Jan O'Brien identical versions of what their father had done to them. After the telephone conversation the appellant grabbed the cricket bat from Christopher and in an underarm movement swung it at Barry Catt's head, hitting him under his right eye and saying "I'll kill you, you cunt." Barry Catt's eye began to bleed. At the time he was carrying a small bottle of eucalyptus oil which he was using for

some medicinal purpose for his lips. He dropped the bottle, spilling the contents. He then left the premises and drove to a friend's house.

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The Crown called evidence from Max French who remembered Barry Catt arriving one night with an injured eye. Barry Catt eventually returned home that night but was woken up in the early hours of the next morning by the appellant and the children who had broken into the office. The appellant struck him around the face, causing his injured eye to bleed again and then left. The appellant called the police who came to the premises, woke Barry Catt up and took him to the hospital and then the police station where he was charged with assault. He spent the weekend in the police cell and was not released until Monday afternoon over two days after his arrest. The police at this stage believed the appellant's story that Barry Catt had attacked the children and her and thrown the eucalyptus oil into Tony Catt's eyes.

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The appellant denied intercepting telephone calls and said the telephone system between the house and the office did not enable her to do so. On her version of the incident, Christopher and Tony Catt went over to the office to get some supplies for homework, thinking Barry Catt was out. The appellant heard screaming and went over to the office and saw the two boys and Barry Catt fighting. Barry Catt said he was going to kill the boys. He picked up a bottle of eucalyptus oil off the desk, and threw it, catching Tony and her in the eye. They had blurred visions but struggled back to the house. The appellant then rang the hospital and tended to Tony's eyes. She denied ever seeing a cricket bat on that occasion. The children gave evidence supporting her version of the events. The police gave evidence locating a broken bottle on the patio.

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Of this incident Mathews J said in her remarks on sentence:

"This was the second occasion on which the prisoner made allegations of violence against her husband, notwithstanding that it was he who had sustained obvious physical injury in the altercation between them. There being no charge relating to this aspect of the matter, however, I can only use it as again indicating a lack of contrition or remorse following this assault with the cricket bat."

Fifth charge in the indictment - "the lithium incident"

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Between May and August 1989 there was little direct contact between the appellant and Barry Catt. However, a number of Barry Catt's friends and associates believed that he was behaving strangely. He was said to be exhibiting symptoms of intoxication but was not smelling of alcohol. One of his friends, Adrian Newell, became suspicious about the appellant's condition. Mr Newell was concerned that the Taree police might be less than objective about matters involving the appellant, for she had frequently boasted of her influence with the local police. He thus travelled to Sydney and visited the ICAC and later Police Headquarters in Sydney in an endeavour to find an independent police officer who might investigate the appellant's actions towards her husband. As a result of these inquiries, Det Sgt Peter Thomas, as he then was (he has since left the police force) was assigned to take charge of the inquiry. It was apparent at the time of the trial that because of previous dealings with each other Det Sgt Thomas was not an appropriate police officer to have charge of the investigation. In her remarks on sentence

Mathews J said of this situation:

"This was, in my view, an unfortunate decision on the part of his superior officers. For it should have been known to them at that stage that Peter Thomas and Roseanne Catt had already very thoroughly locked swords. In 1983, Detective Sergeant Thomas had been in charge of an investigation which had led to Roseanne Catt being charged with arson. She was later no-billed on the matter, but had thereafter made numerous complaints to the Ombudsman and the Police Internal Affairs Department about Detective Sergeant Thomas' behaviour. As I understand it, none of these complaints had been substantiated, but it had led to a situation in which Detective Sergeant Thomas had every reason to harbour animosity towards Mrs Catt. The appointment of a person with this background to head an investigation of this nature had the potential to undermine the integrity of the investigation as a whole, regardless of its real merits. It was thus, as I say, a most unwise decision. In this case, as I shall mention later, it provided Mrs Catt with ammunition to allege, as she did at her trial, that she was the innocent victim of a conspiracy between Barry Catt and Detective Sergeant Thomas, an allegation which would have been virtually impossible to make had a truly objective police officer been assigned to head the investigation."

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A central feature of the present appeal is the actions of Det Sgt Thomas. Significant elements of the evidence tendered before Davidson ADCJ relate to his actions and statements. The evidence which is now available adds significantly to the evidence which could support the appellant's submission that she was the object of a conspiracy between Det Sgt Thomas and Barry Catt.

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On Sunday, 30 July 1989, the day before Barry Catt was due to appear at the Local Court on the committal proceedings for the sexual assault charges, Adrian Newell gained access to the office premises he was using as a dwelling. In the refrigerator he found containers of milk, chocolate milk and orange juice. One of the side effects of Lithium in 1987 was excessive thirst. Ever since Barry Catt had commenced taking this drug he had consumed very large quantities of liquid, frequently in the form of milk and chocolate milk. According to him the appellant kept the refrigerator stocked with these items. Mr Newell removed the containers of liquid, kept them overnight in a refrigerator at his home, and the next day handed them to Det Sgt Thomas. He in turn delivered them to the Government Analyst's Laboratory at Lidcombe. There they were analysed and found to contain substantial quantities of Lithium. A later analysis, at the end of August 1989, also revealed quantities of Clonazepam, this being the active constituent of the drug Rivotril.

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The appellant was charged with causing a noxious thing to be taken by Barry Catt; s 39 of the Crimes Act. The Crown alleged that during the period from May to July 1989 the appellant interfered with Barry Catt's medication and caused him to take more Lithium and Clonazepam than he should have been taking. The Crown alleged that the appellant did this by spiking the contents of bottles of milk, Moove and orange juice contained in the office refrigerator. At that time Barry Catt was the only person using the refrigerator. The appellant knew that Barry Catt was in the habit of drinking large quantities of liquids because of the medication he had to take. The Crown relied on statements made by the appellant to various people and the appellant's attitude towards Barry Catt to prove this count.

Evidence was also led from Amanda Marlin (nee Taylor) that in March 1988 the appellant poured a glass of wine and added two white tablets which she obtained from her handbag, placed the glass on a table in the lounge room of the family home and said "I hope it kills him." The Crown said that this was an apt example of the appellant's hostile attitude towards Barry Catt. Det Paget gave evidence of finding bottles of Lithicarb and Rivotril in a purse in a drawer in the appellant's bedroom when her home was searched on 24 August 1989.

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The appellant's case was that she was the innocent victim of a conspiracy to mount a number of false charges against her by Barry Catt and former Det Sgt Peter Thomas. Barry Catt's purpose was to get himself out of court cases which he was then facing involving sexual allegations against his children. Peter Thomas' motive was revenge arising out of a prior antagonistic relationship with the appellant.

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The only direct evidence of any direct collaboration between Peter Thomas and Barry Catt came from Noel Jago who gave evidence for the appellant about a conversation he had had with Barry Catt. He said that Barry Catt had told him that he had arranged with Det Thomas to switch all the charges back the other way against Roseanne. This was vehemently denied by Barry Catt. The appellant also gave evidence of a telephone call she received from Barry Catt telling her that he and Thomas had worked everything out and all the charges were going to be changed from him to her. The appellant tried to establish that Peter Thomas and Barry Catt's relationship went beyond a business relationship. The Catt children testified that Peter Thomas took part in orgies with other police and them at Cornwall Street on numerous occasions and was always drinking with Barry

Catt. Noel Jago said that Peter Thomas used to bring police vehicles to the shop to be repaired which were never paid for.

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The appellant alleged in her defence that Barry Catt and Peter Thomas had good reason to concoct the charges against her and were able to do so with the assistance of Adrian Newell. The appellant alleged that Adrian Newell and Peter Thomas both had the opportunity to tamper with the liquid in the containers after they left the refrigerator and that the drugs were put there as part of the conspiracy to turn the tables against her. She denied that she had the bottles of pills in her purse and denied that Det Paget, who located them during the search, went anywhere near her dressing table, where her handbag was.

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The jury acquitted her of the offence as charged but found her guilty of an alternate charge, namely of attempting to cause Barry Catt to take a noxious thing with intent to injure him. In her remarks on sentence Mathews J said:

"It follows that the jury must have been satisfied beyond reasonable doubt that it was Roseanne Catt who placed the Lithium in the liquids which Adrian Newell removed. However, they were not satisfied that she had actually caused Barry Catt to take Lithium outside his normal medication at any other time. Furthermore they were not satisfied that her motivation in attempting to poison him on this occasion was anything other than to cause him injury. This is a significant matter on sentence, for had Mrs Catt been convicted of the charge as laid in the indictment, she would have faced a lengthy term of imprisonment in relation to this matter alone."

Sixth charge in the indictment - "soliciting James Morris"

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The Crown called James Morris to give evidence that on 28 July 1989 at Taree RSL Club the appellant propositioned him to kill Barry Catt. James Morris said he had previously never met Roseanne Catt and was spending the night drinking with his sister when the appellant started talking to them. Both the appellant and Morris had consumed a quantity of alcohol at the time.

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The appellant told them her husband was a monster who had sexually assaulted his children and then asked Morris if he wanted to make some money. When asked why, she said: "To do a job on my husband - a good job on my husband." She mentioned that she would pay him \$10,000 to break Barry Catt's arms and legs and that he would get an extra bonus if he killed him. Mr Morris' sister, Sandra Ridgeway, was called by the Crown to give evidence and confirmed this conversation. Mr Morris said he saw the appellant about a week later and she asked had he thought about her proposition. She added that she would like it to be done as soon as possible. The matter, however, was taken no further.

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The appellant denied the conversations with James Morris. She said she was at the club that night with Lucy Parkinson and others and remembered Lucy talking to someone called Sandra, but, she herself did not talk to Sandra Ridgeway, nor did she leave the table to speak to anyone at the bar, let alone James Morris. She also denied that she owned the sort of clothing which was described by Mr Morris and his sister. The appellant called Lucy Parkinson

who said that as far as she knew there was no conversation between the appellant and James Morris. She also described James Morris as being very drunk. The appellant's counsel commented to the jury that it was an extraordinary conversation to take place between two people who had never met before. In her remarks on sentence Mathews J said:

"Nevertheless the jury was clearly satisfied that this incident took place as described by Mr Morris. I can only assume it indicates the extent of the prisoner's recklessness at this late stage of her relationship with her husband."

Seventh charge in the indictment - "soliciting Vernon Taylor"

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Mr Vernon Taylor gave evidence of the circumstances in which he began associating with the appellant in late 1988 or early 1989 and visiting her at the car yard to photograph her Corvette. According to his evidence he spent a considerable amount of time at Cornwall Street. He used to call around to the office on two or three afternoons a week. He said the appellant began to tell him more and more about how Barry Catt was sexually molesting his children.

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Taylor was a professional kangaroo shooter and the appellant asked him at one stage did he have any guns, to which he replied yes. Some weeks later she asked if he would do a job for her. She said: "I want you to bump him off for me because if he is out of the road, it is all finished and there will be no more problems." Taylor knew that she was referring to Barry Catt. The constant thread in all her conversations, he said, was that Barry Catt was a monster who had sexually assaulted his

children and that they would be better off without him. She went on to say that she would pay him \$20,000 if he would do the job. She propositioned him a couple of times but he eventually said that he was not interested in making money that way. She told him not to tell anyone about it and mentioned that if he did she would know about it or if he went to the police she would know because she had friends there who would do anything for her.

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The appellant alleged and Vernon Taylor admitted in cross examination that he was "sweet" on her and this was the reason he visited her workshop so often. The appellant's case was that Taylor's motivation for lying about the alleged conversation was that he was in fact a spurned lover.

Eighth count in the indictment - "encouraging Leslie O'Brien"

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Barry Catt gave evidence of overhearing a conversation at Taree Leagues Club between the appellant and Leslie O'Brien wherein O'Brien promised to shoot Barry Catt himself and get rid of the body, if she could entice him up to the farm. The Crown did not call O'Brien.

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The appellant agreed that she had been at the Leagues Club on the relevant night. She had gone there with O'Brien after attending a wedding. However, from the moment they arrived she alleged that he stood at the bar talking to someone else while she stayed at the table talking to her friends. Accordingly, there was no explanation as to how Barry Catt could have seen her talking to O'Brien.

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On this count the jury acquitted the appellant.

Ninth count in the indictment - "possessing a pistol"

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On 24 August 1989 the appellant was arrested. The Crown alleged that when the police executed a search warrant at the Catt residence on that date they found an unlicensed pistol in her en suite bathroom. Barry Catt gave evidence of an occasion when, a couple of months before they were married, the appellant had first shown him this pistol. The Crown also called evidence from Barry O'Brien and Beverly Lyons of conversations with the appellant when she talked about her gun.

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The appellant denied she ever had a pistol or that she had ever shown one to Barry Catt or talked to Beverly Lyons about her gun. When the police located it during the search the Crown accepted that she said "What is it, a toy. I've never seen it before." The defence was that the police had planted the pistol or more particularly that Det Thomas had. She argued that any number of people had access to the en suite bathroom where it was located.

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In her remarks on sentence Mathews J said:

"The jury's verdict indicates that the police evidence was accepted in this respect. There was in any event considerable independent evidence of Roseanne Catt telling other people that she owned a gun."

The defence of the appellant at the trial

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The nature of the defence put by the appellant at the trial is significant in the determination of the present proceedings. The appellant denied each of the charges and gave an account of the relevant facts at odds with the Crown case. However, of greater significance is the fact that the appellant said that the whole of the Crown case against her was a concoction, being the product of a conspiracy between Barry Catt and the police, in particular, Det Sgt Thomas. The appellant said that they deliberately manufactured the charges for the sole purpose of assisting Barry Catt in the various court proceedings which he was facing at the time, and which he then appeared to be losing.

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Accordingly, as Mathews J pointed out at the trial, the jury was presented with two clear alternatives. Either the appellant was a manipulative, evil woman, as the Crown contended, or she was the innocent victim of a conspiracy, as the defence contended. There was no intermediate version on the evidence as presented to the jury.

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The verdict of guilty on eight of the nine counts meant that the jury essentially accepted the Crown version of events and rejected the defence case of a conspiracy. However, those verdicts now require careful reconsideration having regard to the fact that there is significant fresh evidence available which, if accepted by a jury, would support the conspiracy allegation.