

## Part 6 - The evidence of the Catt children

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There are many difficult issues in this appeal and the evidence of the Catt children raises particular problems. The four children of Barry Catt gave evidence at the appellant's trial. That evidence was directly relevant to counts 1, 2 and 4. The conclusion of the jury to convict the appellant on these counts leads to the inevitable consequence that the children's evidence was rejected by the jury as being untruthful.

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The children were called by the Crown at the hearing before Davidson ADCJ and gave evidence in relation to the rock incident, the cricket bat incident and other matters which was contrary to the evidence they had given at the trial. Furthermore, they now say that the sexual assault allegations which they had previously made against their father, Barry Catt, were false and explained that they had been persuaded to make them by the appellant.

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The children also gave evidence before Davidson ADCJ that they had, at the instigation of the appellant, and with her active participation contaminated the liquids and other foodstuffs kept by Mr Catt with overdoses of his prescribed medication as alleged in count 5 of the indictment.

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The Crown relies on this fresh evidence as strengthening the Crown case in relation to most counts. With respect to the evidence of the Catt children, Davidson ADCJ records the following submissions and refers to the following matters:

"The Catt children have, according to their current versions, told lies in great detail of a kind designed to secure the conviction of their own father of major sexual offences at committal proceedings and at his trial. The jury, having declined to act on their version at Barry Catt's trial, three of them subsequently gave evidence at Roseanne Catt's trial, and, on the assumption which must be made, that the jury accepted her Honour's directions, the jury found beyond reasonable doubt that those three were lying in Roseanne Catt's trial.

In addition, on the assumption which I have made that it is likely that the remarks of Wood J (made at the trial of Barry Catt on the sexual assault charges) were brought to their attention, all four were under continuing threat of investigation and perhaps prosecution for perjury if they maintained their previous versions at Roseanne Catt's trial. Three of them nevertheless did so.

Having regard to the diametrically inconsistent versions given by each of them on oath in various proceedings, one approach might be to simply set aside the whole of their evidence at the section 12 hearing as lacking any credibility at all as to any contested issue.

I have decided not to adopt this approach. Each of these witnesses claims as a child to have been heavily under the influence of Ms Catt when making the sexual assault allegations, making other out-of-court statements and in giving evidence supportive of Ms Catt's case as to eg. the "rock" incident and the "cricket bat/eucalyptus oil" incident, etc. Each of them also gave evidence of "coaching" by Ms Catt in Dapto aided by a former det sgt of the New South Wales Police, Gordon Henderson, whilst Ms Catt was on bail awaiting her trial. These matters must, of course, be given due consideration. The fact remains, however, that

they have been found not to be witnesses of truth.

The general process of conversion

Following the conviction of Ms Catt and her incarceration, the children went to live with one of Ms Catt's sisters, Ms Dawn Lawson (not called at the trial nor in the section 12 hearing).

According to the children's evidence, they only started to disclose to Ms Lawson what each of them now claims to be the true position after Ms Catt was sentenced and they were no longer under her influence. The Crown relies upon the fact that it was almost immediately after they got out of the sphere of influence of Ms Catt that they commenced the drastic revision of their accounts of relevant matters.

Thereafter, for the purposes of the 1993 Appeal, Christopher and Sharon Catt swore affidavits which continued the process of revision leading to their yet more detailed evidence at the section 12 hearing

In October 2001, Christopher and Tony Catt made oral statements on a 60 Minutes television programme generally affirming their revised version.

Shortly prior to each of the four children giving evidence at the section 12 hearing they were interviewed by police officers assisting the Crown in the presentation of its case for the purposes of the hearing, and gave versions generally consistent with their evidence. This was done in interrogatory form and there is no hint, as I read the transcripts, of any undue or improper pressure or suggestion by those police

Finally, in the section 12 hearing, each of them gave a comprehensive reversal of evidence given on oath on previous occasions as to

alleged sexual assaults by Mr Catt and others, and provided other substantial support for the Crown's case in the way of direct evidence on which the Crown relies as to some of the substantive counts in the indictment."

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Davidson ADCJ examined the children's evidence in detail. It is apparent that his Honour holds a suspicion of collusion and coaching by others in relation to the evidence which they now give and was troubled by the apparent "complete and comprehensive" nature of their change of story. His Honour said:

"Internal inconsistencies and possibility of collusion

Some suspicion of collusion, and perhaps of coaching by others, as for example Mr Newell or Mr Catt, as to their current versions is engendered by the complete and comprehensive nature of the "conversion" of these witnesses. There are also parts of their evidence which give some grounds for concern.

Christopher Catt is recorded as having informed the presenters of the 60 Minutes television programme that in a drawer in the en suite of the main bedroom occupied by Ms Catt at 1 Cornwall Street he had previously seen the handle of a "pistol". This tends to support the Crown's case, if true, as to Count 9. In his pre-evidence interview, however, he told the police that what he thought he had seen was "just a cap gun."

Tony Catt and Christopher Catt alleged at the trial of Barry Catt that they had been sexually assaulted by Mr Catt to the point of penile/anal penetration. They now assert no such sexual assault. Indeed, Tony Catt now alleges that he had only been sexually abused by Ms Catt

Sharon Catt (as with Christopher Catt) indicated during the section 12 hearing a close and continuing contact with Mr Newell as a family friend who had taken a sympathetic interest in Mr Catt's well-being, and as a witness. Sharon Catt said that Mr Newell had been in touch with her at about the time of the preparation of the 60 Minutes television programme, circa October 1991. In addition, whilst giving evidence at the section 12 hearing, she said that she had been in touch with Mr Newell about an aspect of one of her statements as to which she said she was in some confusion. Mr Newell it seems had a set of her statements. This and other activities of Mr Newell have generated allegations of collusion.

Julie Catt in the trial of Barry Catt had said that she could remember when she was about one year old and still in nappies, that Mr Catt had vaginally penetrated her with his penis. I find it difficult to accept that an allegation in those terms was suggested to her by any adult. She resiled at the section 12 hearing from any allegation of sexual interference with her by her father. "

The evidence of Drs Cooper and Rack

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Of significance in this appeal is the receipt by Davidson ADCJ of medical evidence which in my view was properly rejected at the trial but which would now be admissible. The evidence tends to support a conclusion that there had been sexual interference with two of the children although the person who may have carried out the relevant acts, if they occurred, cannot be identified.

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There was in evidence in the section 12 hearing, a transcript of the evidence at trial on the voir dire of Drs Cooper and Rack who, at

the request of the Department of Family and Community Services, examined the four children after the making of the sexual assault allegations. Senior counsel for the appellant had sought to introduce this evidence before the jury but her Honour ruled it inadmissible although he was permitted, in light of the issue as to the appellant's state of mind, to adduce evidence from her as to what the doctors had told her.

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The Crown, having called all four Catt children at the section 12 hearing to affirmatively assert the falsity of previous allegations made, put in issue the truth of the sexual allegations. Accordingly, Davidson ADCJ found that the evidence of the doctors now becomes directly relevant. That evidence and his Honour's findings in relation to it were summarised in the following terms.

"Drs Cooper and Rack

The evidence of Drs Cooper and Rack is supportive of the conclusion that at least Sharon and Julie Catt, at some time, had been sexually interfered with by someone to the point of penetration.

The evidence is not, of course, corroborative of any relevant act having been done by Mr Catt but it is relevant, and in my view important, when considering the credibility of these two witnesses.

The Crown's case at the trial of Roseanne Catt, however, was not limited to alleging total fabrication by Ms Catt of allegations of sexual assault and inducing the children to give that in evidence. Presumably as a "fall back" position, the Crown also asserted that she had promoted and exaggerated allegations which may have had a grain of truth but so as falsely to include serious sexual acts by Mr Catt. In either case, alleged the Crown, her motive was

to induce revulsion among any of his friends and acquaintances who might otherwise have been expected to support him.

#### Dr Williams

Her Honour, at the Roseanne Catt trial, also rejected evidence from Dr Williams, psychiatrist, of her expert opinion as to whether the Catt children had been coached in the making of sexual assault allegations, essentially on the basis that specialist psychiatrists are in no better position than lay persons to make such an assessment and that there is no recognised body of expertise to base that opinion. On this issue the Crown also called Dr Walker on the voir dire.

At the section 12 hearing, Dr Williams said that Christopher, Sharon and Julie Catt had been brought to see her by someone from FACS. She said that she understood Tony was then in Queensland. She said she maintained contact with the other three children until September 1991, and several times after the conviction of Ms Catt.

Dr Williams said that at no time in speaking to the children did they alter the version that they had given of alleged sexual abuse. According to Dr Williams, Christopher Catt who at the section 12 hearing had alleged that he was sexually abused by Mr Bridge, Ms Catt's son, told her that he would like to grow up like Mr Bridge because he admired him very much and regarded him as a brother.

Dr Williams gave evidence of what is described as "the accommodation syndrome" in the specialist literature. She said it occurs when children who have been abused sexually reverse their statements when interviewed by another person in order to accommodate the wishes of the interviewer.

The doctor did not say whether in her opinion the recantation of versions given by the three

Catt children she had counselled were explicable by the "accommodation syndrome".

The only assistance I get from Dr Williams' evidence is that, following the incarceration of Ms Catt, none of the three children resiled from previous versions."

The conclusion of Davidson ADCJ in relation to the evidence of the children.

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The conclusions of Davidson ADCJ with respect to the evidence of the children is expressed in the following terms:

"Conclusions as to weight to be given to evidence at Section 12 hearing of the Catt children.

A jury rejected the evidence of all four of the Catt children at the trial of Barry Catt to the effect that they were sexually assaulted by him. Evidence they now give to the effect that they were not, is accepted on that issue. This is because it is clear that the jury rejected their evidence on the basis that they may have been subjected to pressure by Ms Catt.

A jury at the trial of Roseanne Catt found beyond reasonable doubt that three of the Catt children, Christopher, Sharon and Julie, were not witnesses of truth as to the "rock" incident (Counts 1 and 2) and the "cricket bat/eucalyptus oil" incident (Count 4). Evidence now given by them to the opposite effect and consistent with the jury's verdicts as to these counts, although from an unreliable source, may nevertheless provide some support for the Crown's case on these counts.

Where no previous version was given by any of the Catt children and reversed at the section 12 hearing so as to be now consistent with a verdict of the jury in the trial of Ms Roseanne

Catt, evidence now given at the section 12 hearing is not accepted by me because it comes from an unreliable source (c/f Davies and Cody v The King (1937) 57 CLR 170, 183-5). This is so because one jury has already rejected the evidence of all four as not coming from witnesses of truth and another has reached the same conclusion as to three of them beyond reasonable doubt. Therefore the evidence of the Catt children at the section 12 hearing as to Counts 5 and 9 is not accepted by me."

The Crown's submissions with respect to the children's evidence and some conclusions

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The Crown takes issue with the approach of Davidson ADCJ to the children's evidence. It is submitted that the evidence given at the Section 12 hearing should be accepted as truthful, the explanation for the previous lack of truthful evidence being the fact that the appellant, being in a position to do so, had imposed pressure upon the children. As to the allegation of sexual assault in respect of Barry Catt, the Crown emphasises that Davidson ADCJ accepted the evidence which the children had given on that issue in the Section 12 hearing.

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Davidson ADCJ rejected the evidence of the children on counts 5 and 9 (which evidence had never been considered by a jury) holding that, as their previous evidence on other matters had been rejected by a jury, their evidence should be treated as coming from an unreliable source.

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Although Davidson ADCJ accepts that the evidence which the children now give, consistent with previous jury verdicts, may add some weight to the Crown case, in my view, it

would be minimal. Although the evidence could not be entirely rejected there is evidence, particularly from the doctors, which would require careful evaluation before determining whether the children's evidence on any matter was credible (see *Dunn and Cody v The King* (1937) 57 CLR 170). Notwithstanding the fact that a jury has previously rejected the children's evidence, which they now say was false evidence, in my opinion, their evidence must be understood as coming from an unreliable source. Davidson ADCJ is careful to emphasise the possibility that the current version of events offered by the children may be the result of pressure and coaching. Given their admitted susceptibility to pressure in the past, this is a significant matter and militates against giving any significant weight to the evidence which they now give.