

Part 7 - The evidence of Mrs Whalen - a significant witness with respect to the appellant's credit

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At the trial of Barry Catt, Ms Whalen gave evidence under the pseudonym "Mrs A". At that time she was serving a sentence for the manslaughter of her husband. Although her evidence was important in relation to some collateral issues she did not give evidence about any matter central to any of the charges. Her evidence was primarily concerned with the veracity of allegations against Barry Catt of sexual abuse of his children and the preparation and content of a statement which suggests that the allegations may be true. The allegation made by the Crown was that the appellant had sought to fabricate evidence in support of the sexual assault allegations. The issue was obviously of critical significance to the appellant's credit.

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There was tendered in evidence a statement above the signature of Marie Dawn Whalen which has also been signed by Mr Farrer JP. The statement is dated 29 July 1989 and suggests that its author had witnessed non-sexual assaults by Barry Catt of his children as well as behaviour with a sexual connotation. Ms Whalen had been in a position to witness behaviour within the Catt household at times before the appellant formed a relationship with Barry Catt. Davidson ADCJ concluded that if the contents of the statement are true they would provide support for the truth of the allegation of sexual abuse by Barry Catt of his children.

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Mrs Whalen gave evidence at the trial in which she denied signing the document.

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In order to understand the significance of this issue it is necessary to understand the various findings made by Davidson ADCJ in relation to it. They are expressed in the following terms:

"Ms Whalen had known Mr Catt since about 1976. She had cared for the Catt children after Ms Lorraine Catt, their natural mother, had left Mr Catt.

She claimed at the trial that before Mr Catt had been charged with sexually assaulting his children, Ms Catt had told her of the sexual assault allegations involving not only Mr Catt but also other named persons. Ms Whalen said that none of the children had ever made such allegations to her whilst she was looking after them. She claimed that she had told Ms Catt that she did not believe the allegations.

Ms Whalen spoke of a conversation along these lines at which a number of other persons were present. She said that she had told Ms Catt that she required proof of the allegations since she had not suspected anything of the kind alleged whilst she was looking after the children. She claimed that Ms Catt had said words to the effect "Marie, it wouldn't hurt to stretch the truth a little to see the bastard go".

Ms Whalen claimed that she had seen a statement, evidently written by Julie Catt, in which one of Ms Whalen's daughters had been involved, apparently as a victim, in sexual activities. She said that Ms Catt had told her that if she would "do the right thing that will be struck from Julie's statement".

Ms Whalen said following this, she had gone to the Taree Local Court with Ms Catt's sister, Ms Faye Klarenbeek, to take out a summons against Mr Catt with a view to having an apprehended violence order made against him on the basis that he was harassing her.

Among the documents which Det Paget claims to have found in a brief case at 1 Cornwall Street, where Ms Catt and the Catt children lived as at the date of her arrest, 24 August 1989, was T.Ex 21. It is a statement above the signature "Marie Dawn Whalen". It purports to have been signed before Mr Farrar JP on 29 July 1989. It indicates that its author had witnessed non-sexual assaults by Mr Catt of his children as well as behaviour with a sexual connotation. If the contents of T.Ex 21 are true they would provide support for the truth of the allegations of sexual abuse by Mr Catt of his children. Ms Whalen denied, however, that she had signed the document.

Ms Catt said that T.Ex 21 came into existence when Ms Whalen made a visit to 1 Cornwall Street and said she had been to see Det Sgt Burgess who was investigating the sexual allegations, and that she wanted to make a statement. Ms Catt said that Ms Whalen at her own request then dictated a statement to Ms Catt who wrote it out. She said that Ms Whalen had read it over and had said that she would take it home to show to her husband.

According to Ms Catt, Ms Whalen returned with the document the following day whilst Mr Jago, a friend of Ms Catt's, was there. Ms Whalen asked Mr Jago to type the document so that she could send it to Det Sgt Burgess who confirmed that he had received T.Ex 21 among other documents which he had sent to the Office of the Director of Public Prosecutions at Newcastle (H.Ex 2.1; T/T p2363-4). After Mr Jago typed the document Ms Whalen read it over and requested that something be added to it. Ms Catt said that she had done so in handwritten block capitals as appears on the document.

Ms Catt said that it was at her suggestion that the document should be signed by Ms Whalen and attested before a JP. Accordingly, Ms Catt said

she rang her accountant, Mr Crossman (not called either at the trial or section 12 hearing), who had nominated Mr Farrar as a JP for that purpose.

At Ms Whalen's request, Ms Catt said she had driven her to Mr Farrar's office and there, in the presence of herself and Sharon Catt, Ms Whalen had signed T.Ex 21 and her signature was witnessed by Mr Farrar.

Although Mr Farrar was "very sure" that only two adult females were present at the signing of T.Ex 21, Sharon Catt at the trial said that she, Ms Catt and Ms Whalen had gone to see Mr Farrar and Mr Farrar had witnessed Ms Whalen's signature.

In her affidavit for the 1993 Appeal, Sharon Catt deposed that the evidence she gave at the trial was "completely untrue".

Mr Jago (since deceased) gave evidence at the trial. He went to 1 Cornwall Street at the request of Ms Catt. He had there typed the document in the presence of Ms Catt and Ms Whalen. He said that Ms Whalen had taken it away to have it witnessed before a JP. He was not present when the document was signed by Mr Farrar.

Although there are some apparent discrepancies between his account and that of Ms Catt, if accepted, Mr Jago's evidence at least tends to confirm Ms Whalen as having been present when T.Ex 21 was typed and of her leaving with it to have it signed before a JP.

The Crown called, as to other parts of its case, a handwriting expert, Insp Chivers. He gave no evidence, however, as to the authenticity of the signature "Marie Dawn Whalen" on T.Ex 21 although the signature was clearly in dispute. Why this was not done does not appear. Mr Anderson, also a handwriting expert, was

called in Ms Catt's case. He found nothing to suggest that the person who signed T.Ex 21 and the specimen signatures of Ms Whalen was not the same person with, however, the cautionary proviso to this opinion that T.Ex 21 is a photocopy.

Ms Whalen said that she first saw T.Ex 21 when, on 23 August 1989, it was shown to her by Det Sgt Thomas and Det Paget at the house, 27 Milligan Street, Taree, made available to these police by Mr Adrian Newell for the purposes of conducting their investigations into Ms Catt.

Ms Whalen said that subsequently she had been taken by other police to see Mr Farrar JP. She said that she had never previously met him.

Mr Farrar gave evidence at the trial but not at the section 12 hearing. He confirmed attesting the signature to T.Ex 21 on 27 July 1989. Mr Farrar said that the document had been signed by a lady who had accompanied Ms Catt to his office. He said that Ms Whalen was not that lady. He gave substantially the same version at Barry Catt's trial in 1990

Mr Farrar said that Ms Whalen had been brought to his office on 20 September 1989 by police other than Det Sgt Thomas and Det Paget.

He said on the previous Sunday, Det Sgt Thomas had telephoned him at home and had told him that "he had something on me" and would be up to see him the next day. Mr Farrar, however, said that he did not think that Det Sgt Thomas was serious in making this remark. There is evidence of similar conduct of Det Sgt Thomas.

At the trial, Ms Catt (H.Ex 2.10; T/T p2644 et seq esp at p2801) said that Ms Whalen approached her and arranged a meeting with her at the business premises of Ms Fleming, a Taree manicurist. Ms Whalen said, according to Ms Catt, that she was concerned that her own daughters had been associated with the Catt

girls and she felt that in good conscience she should make a statement as to sexual matters involving the children and Mr Catt. Ms Catt claimed that she had told Ms Whalen to contact Det Sgt Burgess who was conducting investigations into the sexual assault allegations.

Ms Fleming confirmed such a meeting as having taken place in 1988.

Ms Whalen agreed that she had met Ms Catt at Ms Fleming's salon on one occasion and that she had a conversation with Ms Catt about the Catt children but denied that she had originated any conversation about the children being sexually assaulted (H.Ex 2.1; T/T p2435-6).

After a voir dire examination, Ms Fleming was permitted before the jury to give evidence to the effect that it had been Ms Whalen who had asked to arrange the meeting with Ms Catt. She also said that there was a conversation about the sexual assault of children and that conversation had been initiated by Ms Whalen. Ms Fleming said that she overheard "quite a bit" of that conversation.

Ms Sharyn Cox gave evidence at the Roseanne Catt trial. On 19 May 2002 she made an affidavit in support of the petition. Paragraph 15, was admitted in evidence over objection by the Crown that the evidence was not fresh. Presumably the Crown was referring to the fact that Ms Cox was called as a witness at the trial and no evidence along the lines of paragraph 15 was led from her. There is no evidence, however, that the legal advisers of Ms Catt were aware of what Ms Cox deposed to in paragraph 15. Pursuant to the established latitude which may be applied to criminal matters I allowed Mr Martin to lead evidence of its contents. I treat it as fresh evidence for present purposes.

Ms Cox deposed and confirmed in her evidence before me that on 18 August 1989 a woman

identifying herself as Ms Whalen had telephoned her and said words to the effect, "I was approached today in the street in Taree by Mr Catt who threatened me and said if I did not change my story he would kill me and my children and my husband what should I do?". Ms Cox said that she told her she should go to the police. The woman said, "The police will not listen to me". Ms Cox suggested she should see a solicitor. The woman said, "I have previously been a babysitter for the Catt children, and I feel guilty in respect to the sexual assaults because I saw signs and the children complained to me which I did not believe".

The affidavit continues to the effect that it was only some two to three days later that Ms Cox heard on the news that Ms Whalen had been arrested for the murder of her husband. Mr Whalen did not die until 30 October 1989. Ms Cox, in verifying the contents of that part of her affidavit at the section 12 hearing, qualified it by saying that she thought her dates were wrong and it was not three days but "some time", although not a long time, after the conversation that she had heard on the news of the arrest of Ms Whalen for the killing of Mr Whalen (H/T p1799-1800).

In cross-examination at the section 12 hearing, Ms Cox said that she had never before spoken to the person who had spoken to her on the phone on 18 August 1989 identifying herself as Ms Whalen. Nor had she spoken to Ms Whalen subsequently. She agreed with the suggestion of counsel that it could have been "any female at all" (H/T p1803-4). Whilst this of course puts in issue whether it was indeed Ms Whalen who made the telephone call, the conversation contains details which permit the inference to be drawn that whoever did make it knew a good deal about Ms Whalen.

Ms Cox had spoken both face to face and on the telephone to Ms Catt before and since 18 August 1989 and it may be assumed that on 18 August 1989 she did not recognise the voice as that of

Ms Catt. There is no suggestion otherwise on the evidence that anyone else may have made the call and impersonated Ms Whalen.

Although the conversation of 18 August 1989, deposed to by Ms Cox, was not in terms put to Ms Whalen at the trial, Ms Whalen gave evidence in cross-examination that in early 1989 Ms Catt had rung her solicitor from her own office in Ms Whalen's presence. She said that as a result of that call she had been advised to see a counsellor. She said she had done so but it was not Ms Cox, but a man to whom she had spoken. When she was asked whether she had spoken to that man about a threat made to her by Mr Catt, Ms Whalen said that she had spoken to the man about the "whole incident" and "told him that I had enough....of being harassed by everybody" (H.Ex 2.1; T/T p2446).

At the section 12 hearing, Ms Whalen confirmed that she had sought an AVO against Mr Catt but claimed that she was "threatened to do so by Mrs Catt". Her attention was drawn to evidence she had given at the trial to the effect that Mr Catt had spoken to her about "knowing some hit people". She said she could vaguely remember giving that evidence.

Ms Whalen said she could not remember the name Sharyn Cox and denied that Mr Catt had ever threatened her. She also denied the substance of the telephone call which Ms Cox said had been made on 18 August 1989 (H/T p2012-3, 2028).

Ms Whalen said that the children had never given her any indication that they had been sexually assaulted but that she had felt guilty because she thought that if that had happened, she had no knowledge of it and she had had the children in her care for over four years (H/T p2072-3).

Ms Catt, at her trial, gave evidence of Ms Whalen coming to see her at the office at 2-8 Cornwall Street "possibly" in June or July

1989. Ms Catt claimed that Ms Whalen told her that Mr Catt had approached her and threatened her that "if she did give evidence against him she would be dealt with". Ms Catt said that Ms Whalen did not have a phone at her home and when she had come to her office she had rang her solicitor and was advised that "she should ring Sharyn Cox...and she did".

Mr Jones was a solicitor acting for Ms Catt in a number of matters. On 15 September 1989 he had gone to Mr George Baird's house at Old Bar to interview Ms Whalen on behalf of Ms Catt.

He said he had spoken to Ms Whalen and had there met her husband, Mr Tom Whalen. Mr Jones said he had made no contemporaneous notes of the conversation he had with Ms Whalen but had typed out what he recalled of it at his office apparently on that same day.

He said that she had told him that when she had first heard of the alleged sexual assaults she could not believe it of Mr Catt. Later she said that she and Ms Catt had "compared notes".

Mr Jones went on to recount that part of the conversation which he said dealt with Ms Whalen's visit to the house at Milligan Street, Taree with the police officers Det Sgt Thomas and Det Paget on 23 August 1989. She told Mr Jones that she had gone to the house feeling frightened, under some degree of pressure from Det Sgt Thomas.

Mr Jones said Ms Whalen claimed that Det Sgt Thomas had declined to allow her to make arrangements for the care of her children whilst she was away from her own house. She claimed that Det Sgt Thomas had told her that they had information on which they might charge her with some "serious offences" including social security fraud and that she would be charged if she did not go with the police (as to other evidence of alleged threats to potential witnesses by Det Sgt Thomas see

paras. 609-688). Mr Jones said Ms Whalen claimed that Det Sgt Thomas had declined to allow her to make arrangements for the care of her children whilst she was away from her own house. She claimed that Det Sgt Thomas had told her that they had information on which they might charge her with some "serious offences" including social security fraud and that she would be charged if she did not go with the police (as to other evidence of alleged threats to potential witnesses by Det Sgt Thomas see paras. 609-688).

Ms Whalen said, according to Mr Jones, that when she went to the house at Milligan Street she was terrified and had been kept there for approximately five hours.

Mr Jones claimed that Ms Whalen said that the police officers had said to her, in effect, that they wanted her to change her story and confirm that Ms Catt was a liar. She said that she kept denying matters put to her by Det Sgt Thomas but he kept shouting at her that she was "a fucking liar" and that she was "in big trouble unless you say what we want".

Ms Whalen said that she had told the police about taking out a summons against Mr Catt seeking the protection of an AVO and that the police had "warned" her not to turn up on that summons. Mr Jones said that Ms Whalen had told him that the police had said that Ms Catt was to be arrested the next day and that the same thing would happen to Ms Whalen unless "you tell us what we want".

Mr Jones said Ms Whalen told him that she had believed that she was going to be killed or charged with a serious offence and was so terrified that she was prepared to tell the police anything they wanted to hear. She went on to say, however, that she was not prepared to say anything further to Mr Jones until her legal adviser had told her that she was protected. She spoke about "these corrupt police".

Mr Jones claimed that Ms Whalen had told him that whilst she was at the house in Milligan Street, the police had referred to Ms Catt as a bitch and spoke of "setting her up". He said that Ms Whalen said that a revolver had been produced and she had believed that she might have been shot. She told him that while she spoke, the police were typing and themselves dictating responses to questions which purported to have come from her. She said she had signed a statement although she knew that substantial parts of it were untrue and the words used were not hers but those of the police.

Ms Warne, a FACS Officer, gave evidence at the trial (H.Ex 2.10; T/T p3367 et seq) and at the section 12 hearing (H/T p2089 et seq).

At the trial she said she had spoken to Ms Whalen after the arrest of Ms Catt on 24 August 1989 whilst the Catt children were in the care of FACS. She said on 19 September 1991, in the presence of another FACS officer, Mr Baggs, Ms Whalen had come into the FACS office making enquiries about the Catt children. Ms Warne claims that Ms Whalen told her that she was a good friend of Ms Catt's and that she, Ms Whalen, would care for the children.

Ms Warne said that Ms Whalen said that Det Sgt Thomas had "stormed" into her house and taken her to the vacant house at Milligan Street where she had been for a number of hours. She said that another detective, obviously referring to Det Paget, had "sat spinning a gun" at her.

Ms Warne said that Ms Whalen had mentioned something about them wanting her to make a statement or change a statement. Ms Warne said that Ms Whalen had said that she had eventually signed whatever they wanted her to sign. She said she was afraid of Det Sgt Thomas.

Ms Warne, at the section 12 hearing, identified a note (Pt H.Ex MMMMM) in her handwriting tending to confirm that Ms Whalen made a second visit to the FACS office and that she had done so with her husband, Tom. There is a date "4/10" on the note and there is also, as part of H.Ex MMMMM, a letter apparently from Ms Whalen addressed to the Catt children. Ms Warne said that she saw Ms Whalen and her husband at the FACS office on more than one occasion

Ms Warne said that Ms Whalen had asked her to pass on the letter (Pt H.Ex MMMMM) to the Catt children. It is dated 2 October 1989 and supports the inference that all four of the Catt children were still then in foster care.

Ms Warne said that she could not remember Ms Whalen saying that she had signed a statement to the police under duress (H/T p2099).

Mr Baggs, FACS Officer, gave evidence at the trial (H.Ex 2.8; T/T p3396 et seq) and at the section 12 hearing (H/T 2102-42) of visits by Ms Whalen on both 19 September 1991 and 4 October 1991. She was introduced to him by Ms Warne. He said on the first occasion Ms Whalen was alone. On the second, her husband was with her.

He said that although Ms Whalen's appearance had differed on each occasion, it was the same person (see also evidence of Ms Jeannie Strachan: paras. 208-209).

He confirmed the substance of the evidence of Ms Warne as to what had been said.

At the section 12 hearing Mr Baggs confirmed the accuracy of a report which he had made, H.Ex UUUU, on the basis of FACS records for the Ombudsman and admitted without objection as evidence of the facts stated in it.

Paragraph 73 contains an extensive note of the conversation of 19 September 1989 with Ms Whalen. She alleged having been taken from her

home by Det Sgt Thomas and Det Paget, to the house at Milligan Street and being held for five hours and interrogated. She said that Det Paget had spun the chamber of his revolver while she was being questioned. She maintained that she had signed a statement under duress.

Mr Baird was a friend of Ms Catt's. When bailed he was her surety. He said at her trial that on the morning after her arrest on 24 August 1989, he had gone to Ms Whalen's house and had seen she was distressed. She told him that she had been taken by the police to a house where she was questioned. She said that the police had a gun beside a typewriter. She said that one of them had taken the gun out of a holster and was looking at it whilst he was talking to her.

Mr Baird said that he had told her that she should see a solicitor and make a statement but she said, "The police told me not to contact anyone, they had a car outside the place all night" (H.Ex 2.8; T/T p3724-5).

Ms Whalen at the section 12 hearing confirmed that she had gone to the house at Milligan Street but denied that Det Paget had spun the chamber of his revolver. She also denied both making a statement under duress and having told the officers of FACS that she had been threatened or otherwise badly treated by two police officers (H/T p2013, 2018).

Ms Whalen denied that she had told Mr Michael Jones that the police had taken her to the house at Milligan Street and had threatened her. She said she had made no complaint to Mr Jones or Mr Baggs (H/T p2014).

T.Ex VVV is a handwritten note made by Ms Whalen and left at the door of 27 Milligan Street, Taree. It states in part, "I do want to help you people...." and requests a meeting "at 3" (see evidence of Mr Thomas, H.Ex 2.7; T/T p2115-6). This was relied on by the Crown as evidence that "she really was being co-

operative with the police and was concerned to assist them T.Ex VVV is a handwritten note made by Ms Whalen and left at the door of 27 Milligan Street, Taree. It states in part, "I do want to help you people...." and requests a meeting "at 3" (see evidence of Mr Thomas, H.Ex 2.7; T/T p2115-6). This was relied on by the Crown as evidence that "she really was being co-operative with the police and was concerned to assist them" (S/U p125-6 where the jury was also directed that what Ms Whalen had told Mr Jones "does not constitute positive evidence that the events did take place as she described" (c/f now position under s106 Evidence Act 1995)).

After Ms Whalen was released from gaol she had spoken to Ms Anne Strachan (H/T p2152-5), the mother of Ms Jeannie Strachan who had been an inmate and "girlfriend" of Ms Whalen in gaol.

Ms Anne Strachan said that Ms Whalen had told her that Mr Catt was "sexually abusing his children". Although Ms Whalen denied the substance of other alleged conversations between her and Ms Anne Strachan, this allegation was not put to Ms Whalen in the witness box.

Ms Strachan was called in the case for Ms Catt at the section 12 hearing. She said (H/T p2335 et seq) that Ms Whalen had blonde hair about collar length or a bit longer when they first met in prison. Ms Jeannie Strachan said between early to mid 1990 until late 1992 Ms Whalen had cut her hair "very short and spiky and dyed black". Ms Strachan said that Ms Whalen had had her hair black for three or four months and then blonde again (see photographs H.Ex UUUUU).

This evidence was led to suggest that Ms Whalen may have changed her hair colour between the time that she had, according to the case for Ms Catt, gone to see Mr Farrar on 27 July 1989 and the time that she had visited his office with the police on 20 September 1989 (see also evidence of Mr Baggs at para. 197).

Ms Strachan said that whilst in gaol, Ms Whalen had "blamed Roseanne for a lot of things". She said that Ms Whalen said she had "set Roseanne up". She claimed that Ms Whalen had spoken of getting Ms Catt into trouble and wanting to "bash her", "just to give this lady a very hard time" (H/T p2337).

Ms Perez (H/T p1095 Ms Perez (H/T p1095 et seq) said that between May 1989 and September 1989 she was an inmate at Mullawa prison where she had spoken to Ms Whalen. She said about two weeks after a date in December 1991, she had returned to gaol and shared a cell with Ms Whalen who told her that she had "very influential friends on the outside" who were willing to pay money to put Ms Catt in hospital. Ms Perez claimed that Ms Whalen had told her that Ms Catt had to be hurt "bad enough to keep her in hospital" and if she should happen to accidentally kill her "they'll put more in your account".

Ms Perez said she was released from prison in September 1992. She had attended the trial of Mr Bridge in 1995 and had been in continuous contact with Ms Catt since her release. She said that although they had discussed "her Appeal" they had not discussed the evidence. She described Mr Bridge as "like a brother to me" and said she was very close to the family.

Ms Perez denied that she had ever used the name "Roseanne Catt" as one of her aliases although she said she had used different names from time to time but did not do that now. Although the Crown appears to have been in possession of some documentary evidence tending to indicate that Ms Perez had used "Roseanne Catt" as one of her aliases, I rejected the tender of that document on the basis that it was on its face unreliable (see H/T p1914).

SENTENCING PROCEEDINGS AND GAOL VISITS

On 12 October 1990, in sentencing Ms Whalen for

the manslaughter of her husband, Wood J (as he then was) imposed a term of five years with an additional term of three years. Although there is no suggestion in the Remarks on Sentence that there was to be any reduction for assistance to authorities, it is clear that his Honour had been made aware that Ms Whalen was to be a Crown witness in the prosecution of Ms Catt (see Remarks on Sentence, Pt H.Ex 37).

There were a number of contacts in gaol between Ms Whalen and the investigating police, Mr Newell and Mr Catt before and after she was sentenced.

On 31 July 1990 she was visited by Mr Newell before she had entered a plea of guilty to manslaughter. Mr Newell gave character evidence for Ms Whalen on sentence with, according to Ms Whalen, no sufficient basis of prior knowledge of her.

Ms Whalen gave evidence that she had expected support from Det Sgt Thomas and Det Paget at her sentencing proceedings which, however, was not forthcoming. It is difficult to see what they might have been expected to say on her behalf other than to indicate to the sentencing judge what his Honour already knew, namely that she was an important Crown witness in the forthcoming trial of Ms Catt.

On 5 December 1990, Ms Whalen gave evidence at the trial of Mr Catt, in effect refuting T.Ex 21 and denying that it was her document. On 15 July 1991, she gave evidence at the Roseanne Catt trial to similar effect.

On 13 September 1991, two days after the jury had returned with their verdicts in the Roseanne Catt trial, Ms Whalen was visited in gaol by Mr Newell again and by Mr Catt. Ms Whalen described this as a "victory" visit. Mr Catt also visited her on 6 October 1991.

On a date which does not appear, there being no

record of it in the Corrective Services official record of visits to Ms Whalen but which must have been after the date on which she was sentenced, she was visited by Det Sgt Thomas and Det Paget (see statement of Shirley May Heggarty, H.Ex 40). There is no suggestion as far as I am aware that either of them took any part in the investigation into the death of Mr Whalen.

Ms Whalen said in evidence that on the gaol visit to her by Det Sgt Thomas and Det Paget, they had extended expressions of continuing good will and support. "

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Davidson ADCJ expressed a number of conclusions with respect to the evidence of Ms Whalen.

Relevant matters are as follows:

"CONCLUSIONS AS TO MS MARIE WHALEN

A review of the evidence relating to the alleged telephone conversation with Ms Cox on 18 August 1989 leads me to conclude that it was Ms Whalen who rang Ms Cox. I accept that a conversation ensued in terms of the evidence given by Ms Cox. I am of the view that this evidence qualifies as fresh evidence.

The evidence of Ms Anne and Ms Jeannie Strachan and Ms Perez is clearly fresh and is to be considered in the context of evidence given at the trial which I regard as reliable, namely that of Ms Fleming, Mr Jones, the FACS officers Ms Warne and Mr Baggs, the contents of H.Ex UUUU, and Ms Cox.

There is fresh evidence to support the conclusion which I draw that the evidence of Ms Whalen is so unreliable that she is not to be regarded as a witness whose evidence I accept on contested matters.

If that fresh evidence had been before the jury in the trial of Roseanne Catt there is a

reasonable possibility that the jury may have rejected Ms Whalen's evidence either in whole or substantial part.

Acceptance of the evidence of Ms Whalen in whole or substantial part by the jury at the trial of Roseanne Catt is likely to have had seriously adverse repercussions to the case presented on behalf of Ms Catt on all contested issues at her trial.

The evidence of the gaol visits to Ms Whalen by Det Sgt Thomas and Det Paget, and by Mr Newell and Mr Catt, is a circumstance which tends to support the inference that Ms Whalen should not be regarded as a witness of truth as to contested matters.

Mr Newell putting himself forward as a witness qualified, when he was not, to give evidence as to the good character of Ms Whalen is a circumstance which tends to support an inference of the real possibility of collusive conduct to secure the conviction of Ms Catt irrespective of the real merits of available evidence (as to Mr Newell's evidence see Pt H.Ex 41, Q&A 50; H/T p2027-30).

The evidence, not available to Ms Catt's legal advisers at the trial, to the effect that Ms Whalen bore considerable and continuing ill-will towards Ms Catt up to and including advocating serious physical injury to her or even her death, tends to support the conclusions to which I have come. Although Ms Perez, Ms Anne and Ms Jeannie Strachan were subjected to cross-examination as to their credit, I do not regard their evidence as incapable of acceptance.

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The Crown challenges the findings made by Davidson ADCJ in relation to Ms Whalen in virtually every respect. However, given the confined role of this Court the submissions must be rejected. His Honour had the

considerable advantage in this case of observing the witnesses and I am not persuaded that his Honour's findings as to the credit of Ms Whalen and those who gave evidence relevant to the evidence she gave were other than appropriate.

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I also agree with his Honour's conclusion that the acceptance of Ms Whalen by the jury is likely to have "had seriously adverse repercussions to the case presented on behalf of Ms Catt on all contested issues at her trial". Given that the allegation of sexual abuse by Mr Catt of his children was a central issue with respect to the appellant's credit it could hardly be otherwise.