

THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION
DAVIDSON ADCJ

27 JULY 2004

.02/12/1052 R v ROS EAN N E CATT

JUDGMENT ON REMITTER BY THE COURT OF CRIMINAL

APPEAL UNDER SECTION 12(2) CRIMINAL APPEAL ACT 1912
FOR DETERMINATION OF FACTUAL ISSUES

CONTENTS

Paras.

I INTRODUCTION 1-8

- (a) Indictment 1
- (b) Sentences 3
- (c) 1993 Grounds of Appeal 4
- (d) Petition and Remitter 5

II APPROACH TO THE DETERMINATION OF FACTUAL ISSUES 9-32

- (a) Current Grounds of Appeal 9
- (b) General Approach 10
- (c) S474C(1)(b) Crimes Act 1900 13
- (d) Fresh Evidence 17
- (e) Alleged Misconduct by Police 23
- (f) Procedural Matters 29

III SUMMARY OF PRINCIPAL DETERMINATIONS 33-68

- (a) Weight to be given to the Evidence at the Section 12 Hearing of Christopher, Sharon, Julie and Tony Catt 33
- (b) Ms Marie Whalen 36
- (c) Count 5: Lithium / Rivotril 39
- (d) Count 9: The Unlicensed Pistol 51
- (e) Other Aspects of the Police Investigation 55
- (f) Mr Shane Golds 66
- (g) Count 6: Mr James Morris 67
- (h) Counts 1, 2, 3, 4, 6 and 7 68

. P-1
Paras

IV OUTLINE OF THE CROWN'S CASE AT TRIAL 69-8

- (a) Taking Control of Mr Barry Catt's Business 71
- (b) Mr Barry Catt's Mental Health 77

V THE SEXUAL ASSAULT ALLEGATIONS 90-10

- (a) The Opposing Cases at Trial 90
- (b) The Sexual Assault Trial of Mr Barry Catt 96
- (c) Aftermath of the Sexual Assault Trial 97

VI WEIGHT TO BE GIVEN TO THE EVIDENCE OF THE CATT CHILDREN 103-14

- (a) The Trials 10
- (b) The Section 12 Hearing 10
- (c) The General Process of Conversion 11
- (d) Internal Inconsistencies and Possibility of Collusion 12
- (e) Medical Evidence Not Admitted at the Trial 12
- (f) Drs Cooper and Rack 12
- (g) Dr Williams 13
- (h) Conclusions as to Weight to be Given to Evidence at the section 12 hearing of Catt Children 13

VII MS MARIE WHALEN 141-22

- (a) T.Ex 21 (Pt H.Ex 29) 14
- (b) Ms Roseanne Catt and T.Ex 21 14
- (c) Ms Sharon Catt 15

(d) Mr Noel Jago 15

. P-2

Paras

(e) The Handwriting Evidence 158

(f) Mr Farrar JP 160

(g) Ms Marie Whalen's Prior Inconsistent Statements: 165

Ms June Rose Fleming 165

Ms Sharyn Cox 169

Ms Roseanne Catt 178

Mr Michael Jones 179

Ms Christine Warne 189

Mr Gregory Baggs 196

H.Ex UUUU 199

Mr George Baird 201

Ms Marie Whalen 203

Ms Anne Strachan 206

Ms Jeannie Strachan 208

Ms Kellie Perez 211

(h) Sentencing Proceedings and Gaol Visits 214

(i) Conclusions as to Ms Marie Whalen 222

VIII THE DEFENCE CASE OF COLLUSION OR CONSPIRACY TO WRONGLY CONVICT MS ROSEANNE CATT 230-26

(a) Background: 235

Det Sgt Thomas 235

Det Sgt Thomas and Mr Barry Catt 241

Mr Noel Jago 243

Ms Lorraine Pearson (Catt) 244

. P-3

Paras

Ms Sharon Napper (Clarke) 24

Mr C A (Adrian) Newell 24

Telephone Contact Between Witnesses 25

Ms Roseanne Catt 25

(b) Mr Barry Catt's Erratic Behaviour 25

(c) Mr Adrian Newell's Intervention 26

IX COUNT 5: LITHIUM I RIVOTRIL 263-46

(a) Lithium / Rivotril and Mr Barry Catt: 26

DrAguado 26

Dr Sandfield 26

Rivotril: How Much of it was Dispensed? 26

(b) Mr Adrian Newell's Visit to 2-8 Cornwall Street on 30 July 1989 27

(c) Det Sgt Thomas: Did he know Mr Adrian Newell Intended to Take the Liquids? 27

(d) Conclusion as to Det Sgt Thomas' Knowledge of What Mr Adrian Newell Intended 28

(e) The Analyses of Lithicarb and Clonazepam 28

(f) Det Sgt Thomas' Interview with Mr Barry Catt on 7 August 1989 29

(g) Provenance of the Milk and Orange Juice 30

(h) Was Ms Roseanne Catt the Only Person who had an opportunity to put the Lithium and the Rivotril in the Liquids?30

(i) When was the Request for Rivotril Analysis Made to the Government Analytical Laboratories? 31

Q) Det Paget and the Handbag 32

(k) H . Ex AAB 32

. P-4

Paras

(I) Ms Roseanne Catt's Recorded Interview of 24 August 1989 33

(m) Det Parkes 33

(n) Const Cottee 34

- (o) Det Paget: Prior Inconsistent Statements 34
- (p) Did Det Paget Identify the Containers of Lithium and Rivotril at the Trial? 35
- (q) Mr Adrian Newell Finds Another Bottle of Rivotril 35
- (r) The Mandarinine etc. 37
- (s) Access to the Office Refrigerator: 38
- Mr Barry Catt 38
- Ms Faye Klarenbeek 38
- Ms Joy McGregor 38
- Mr Peter Bridge 39
- (t) Mr Graeme Fellows 39
- (u) Mr Peter Caesar and Ms Leanne Cheers 40
- (v) Mr Peter Thomas 41
- (w) Ms Leanne Cheers 41
- (x) Evidence of the Catt Children as to Count 5 42
- (y) Conclusions as to Catt Children's Evidence on Count 5 42
- (z) The Summing Up as to Count 5 42
- (aa) Conclusions as to Count 5 44

X COUNT 9: THE PISTOL 461-520

- (a) Const Cottee 46
- (b) Ms Roseanne Catt 46
- (c) The Pistol 46

. P-5
Paras.

- (d) Other Evidence Relied on by the Crown as to Count 9: 465

Mr Barry Catt 466

Ms Suzanne Miller 468

Ms Marie Whalen 469

Mr Barry O'Brien 474

Ms Beverley Lyons 475

Ms Barbara Chapman 476

Mr Stephen Foster 479

Mr Christopher Catt 481

Ms Sharon Catt 485

Ms Julie Catt 489
Mr Tony Catt 491

(e) Count 9: Evidence at the Section 12 Hearing in the Case fo
Ms Roseanne Catt: 492

Mr Douglas Annetts 492

Mr Peter Bridge 496

Ms Julieanne Bridge 497

Ms Faye Klarenbeek 498

Ms Joy McGregor 499

Mr Peter Caesar and Ms Leanne Cheers 501

Ms Roseanne Catt 503

(f) The Peripatetic Alcohol 504

(g) Conclusions as to Count 9 512

. P-6

Paras

XI OTHER ASPECTS OF THE INVESTIGATION 521-68

(a) Milligan Street 52

(b) Breaking and Entering of Mr Peter Bridge's House 52

(c) Mr Barry O'Brien and Det Sgt Thomas 53

(d) The Search Warrants and Seizure of Property 54

(e) Execution of the Search Warrants 55

(f) Disposition of Property Seized 56

(g) Conclusions as to the Search Warrants and Seizure of
Property 57

(h) Det Sgt Thomas and Ms Roseanne Catt's Bail Applications 57

(i) Conclusions as to Ms Roseanne Catt's Bail Applications 59

(j) Det Sgt Thomas' Reaction to Allen J's Criticisms 59

(k) Conclusions as to Det Sgt Thomas' Continued Involvement in
the Catt Case 59

(l) ICAC Referral: Ms Roseanne Catt's "Friends in High Places" 59

(m) Conclusions as to ICAC Referral 60

(n) Pressure on Potential Witnesses and Others: 60

The Trial: 61

Ms Marie Whalen 61

Mr Frank Farrar 61
Dr Richardson 61
Mr Barry O'Brien 61
Mr Michael Jones 61
Mr George Baird 62
Mr Shane Golds and Mr James Morris 62

. P-7
Paras.

Section 12 Hearing: 623

Mr Arthur Bates 625

Mr Jake Sourian 630

Mr Ramon Bracamonte / Ms Crista Van der Merwe 639

Conclusions as to Mr Ramon Bracamonte and Ms
Crista Van der Merwe 662

Possibility of Perjury in Re: Mr Ramon Bracamonte
/ Ms Crista Van der Merwe 663

Conclusions as to Whether Mr Peter Thomas May
Have Committed Perjury 670

Ms Margaret Nagy 672

Ms Gina Hart 678

Mr Peter Thomas 682

Conclusions as to Ms Margaret Nagy 684

XII COUNTS 1 AND 2: THE "ROCK" INCIDENT AND THE PERJURY
COUNT 689-739

(a) Conclusions as to Count 1 699

(b) Was the Indictment Fair? 701

(c) Mr Shane Golds: The Section 12 Hearing 705

Mr Peter Bridge 724

The Section 12 Hearing: Factual Issues 726

Conclusions as to Mr Shane Golds 727

COUNT 3: THE SWAN'S CROSSING WOUNDING 740-761

(a) Mr Barry Catt 741

(b) Mr Garry Jeffrey 745

. P-8

Paras.

(c) Ms Beverley Thompson 747

(d) Mr Garry McGuire 748

(e) Dr Goddard 749

(f) Ms Roseanne Catt 750

(g) Where did Mr Barry Catt Spend the Night of 11-12 March 1989? 751

(h) Ms Janet Eslick 753

(i) Handwriting Evidence 758

(j) Section 12 Hearing: Mr Peter Bridge 759

(k) Conclusions as to Count 3 760

XIV COUNT 4: THE CRICKET BAT / EUCALYPTUS OIL INCIDENT 762-784

(a) The Trial: 762

Mr Barry Catt 762

Ms Jan O'Brien 767

Mr John Pearson 768

Ms Julie Banks 771

Ms Roseanne Catt 772

The Catt Children 775

Const Adams 776

Const Rigby 778

Mr Barry Catt's Explanation of the Police Evidence 780

Mr Max French 781

Dr Lucas 782

(b) The Section 12 Hearing: The Catt Children 783

(c) Conclusions as to Count 4 784

. P-9

Paras

XV COUNT 6: SOLICITING OF MR JAMES MORRIS TO MURDER
MR BARRY CATT 785-83

- (a) The Trial: 78
- Mr James Morris 78
- Ms Sandra Ridgeway 79
- Ms Roseanne Catt 79
- Ms Lucy Parkinson 79
- (b) The Section 12 Hearing: 79

Ms Joy McGregor 79
Ms Lucy Parkinson (Cooper) 79

Is Ms Lucy Parkinson's Additional Evidence Fresh?80

- (c) Mr James Morris and Allegations Relating to Under-Age
Aboriginal Girls: 80

Mr Gregory Baggs and H.Ex 00000 80

- (d) Did Det Sgt Thomas and/or Det Paget Know of the Facts
Asserted in H.Ex 00000 as at 5 September 1989? 81

- (e) Conclusions as to Count 6: 82
- Ms Joy McGregor 82

Ms Lucy Parkinson 82

Allegations as to Under-Age Aboriginal Girls 83

XVI COUNT 7: SOLICITING OF MR VERNON TAYLOR TO MURDER
MR BARRY CATT 837-87

- (a) The Trial: 83

Mr Vernon Taylor 83

Ms Roseanne Catt 84

The Catt Children: Christopher, Sharon and Julie84

. P-10

Paras

- (b) The Section 12 Hearing: 853
- The Catt Children: Christopher, Sharon and Julie853
- Mr Andrew Connolly 868
- (c) Conclusions as to Count 7 872

APPENDICES: The Section 12 Hearing: Page
Exhibits List 229
MFI List 238
Witness List By Alpha 242
Witness List by Date 245

ABBREVIATIONS

T/T: Trial Transcript
H/T: Hearing Transcript
T.Ex: Trial Exhibit
H.Ex: Hearing Exhibit
DOCS: Department of Community Services
FACS: Family and Community Services (Now DOCS)
. P-11

1 INTRODUCTION

(a) INDICTMENT

Ms Roseanne Catt 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 counts and acquitted on Count 8. On Count 5, the jury returned a verdict of guilty of attempt (see below).

2. 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 (section 35 Crimes Act 1900);

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 1900);

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 (s35 Crimes Act 1900);

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 (s59 Crimes Act 1900);

. P-12

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 (s39 Crimes Act 1900: The jury acquitted Ms Catt on this count but convicted her of one of five alternative verdicts left to them for consideration in accordance with written directions a copy of which is H.Ex 4A. The jury returned a verdict of guilty of the fifth alternative, i.e. attempting to cause to be taken by Mr Catt a noxious thing, namely Lithium with intent to injure Mr Catt: ss40, 41, 344A and 427 Crimes Act 1900. See now s162 Criminal Procedure Act 1986);

Count 6: That Roseanne Catt on 28 July 1989 at Taree in the State of New South Wales did solicit James Morris to murder Barry Catt (s26 Crimes Act 1900);

Count 7: 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 (s26 Crimes Act 1900);

Count 8: 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 (s26 Crimes Act 1900 - acquitted);

Count 9: 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 (s25(1) Firearms and Dangerous Weapons Act 1973).

. P-13

(b) SENTENCES

3. On 18 October 1991 Ms Catt 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;

The earliest date on which Ms Catt became eligible for parole was 10 December 2001.

(c) 1993 GROUNDS OF APPEAL

4. Appeals against conviction and sentence were dismissed on 10 June 1993: *R v Roseanne Catt* (1993) 68 A Crim R 189. The grounds of appeal were as follows:

. P-14

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 TIT 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);

. P-15

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.

(d) PETITION AND REMITTER

5. The Attorney-General, after consideration of a petition to His Excellency, The Governor, under Part 13A of the Criminal Appeal Act referred the whole of the case to the Court of Criminal Appeal. In doing so the Attorney-General exercised

the power given by s474C(I)(b) of the Crimes Act 1900 (see Pt H.Ex 1 for formal instrument of referral).

6. The Court of Criminal Appeal, as required by s474L of the Crimes Act 1900 proceeded to deal with the case in the same way as if the convicted person had appealed against her convictions under the Criminal Appeal Act 1912.

7. The Court of Criminal Appeal pursuant to s12(2) of the Criminal Appeal Act 1912 ordered that "the factual issues in this case" be remitted to a judge of a court of trial. S12(2) provides that such a remitter is made for "determination". No directions subject to which the determination is to be made were given by the Court of Criminal Appeal (for the formal order see H.Ex 1).

8. For the purpose of this remitter the District Court was appointed the court of trial and as an Acting Judge of that Court I was requested to preside at the hearing (the Chief Justice's memorandum to the Registrar of the Court of Appeal dated 26 July 2002).

. P-16