

THE EVIDENCE OF MARIE DAWN WHALEN

1. This is a case of unusual complexity, although it was put to the jury by the trial judge as presenting in the end the stark simple choice "either, according to the Crown case, Roseanne Catt is an evil, manipulative woman or, on the other hand, she is the victim of a monstrous conspiracy" (SU 3.5).
2. The role in the case of Marie Dawn Whalen provides perhaps as good an example as any of the kaleidoscopic way in which evidence looked at in one light may seem to support the thesis of the evil manipulative woman, and in another light the thesis of the monstrous conspiracy.
3. The essential value of Mrs Whalen's evidence to the prosecution case was that it provided an example of Roseanne Catt encouraging or manipulating people to give false evidence against Barry Catt in relation to sexual abuse of his children (see SU 178, 185-189). Its essential value to the defence case was as an example of the unscrupulous means used by Detective Sergeant Thomas to threaten and exert pressure on people in order to obtain evidence supporting the prosecution.
4. Mrs Whalen had known Barry Catt for many years. She and her family had occupied a house owned by him, close to his own, from 1980 to 1983, and she had taken care of his children over a large part of that period.
5. Mrs Whalen applied for an apprehended violence order against Barry Catt on 3 August 1989. She said that this was at the insistence of Roseanne Catt.
6. She said that a statement typed up in her name, and apparently bearing her signature, which had been signed in front of a Justice of the Peace in the presence of Roseanne Catt on 27 July 1989, had not been agreed to or signed by her. In short, that the statement as a representation by her was a pure fabrication.
7. In the background of these issues was the question of how Mrs Whalen and Roseanne Catt had ever come into contact. Roseanne Catt said

that she had not known Mrs Whalen until she had been contacted by one June Rose Fleming, a local manicurist, whose services she used; Fleming had told her that she had been approached by Mrs Whalen, another customer, and asked to arrange a meeting between the two of them. At the meeting, at Fleming's salon, Mrs Whalen had then told her of concerns she had about sexual abuse of his children by Barry Catt and others. Mrs Whalen denied this account (T. 2434-2436), and said that she had gone to see Roseanne Catt at Catty's Body Repairs to confront her over something she had said to a friend, Janine Holroyd (T. 2437).

8. In her interview with Detective Boyd Skinner on 9 April 2003 she gave a very different account of their first meeting. There was no mention of any concern about something said to Janine Holroyd, nor that she had called in to the office. Indeed, the contact was a phone call initiated by Roseanne Catt (Ex 41, A24).
9. June Rose Fleming supported the version given by Roseanne Catt (T. 3663-3667). If Mrs Fleming's account were true, Mrs Whalen's insistence that she had met Roseanne Catt before the conversation in the salon could not be correct. Moreover, the concern and content of the conversation was generally consistent with the contents of the disputed statement dated 27 July 1989.
10. A third issue very much overshadowed these others. At about 4.00 pm on 23 August 1989, Sergeant Thomas and Detective Paget called at Mrs Whalen's house. On all accounts it was the first time she had met either officer. They took her to an unoccupied and largely empty house at 27 Milligan Street, Chatham, where they spent the next five hours interviewing her and taking statements from her.
11. Several witnesses gave evidence that over the next month, Mrs Whalen had told them of being taken away by the police, and told some of them that she had been terrified and had signed a statement although it was untrue.

Chris Warne	(Re 19/9/89)	3377-3378
Greg Baggs	(Re 19/9/89)	3405-3406
George Baird	(Re 25/8/89)	3724-3725
Michael Jones	(Re 15/9/89)	3728-3732

-
12. Mrs Whalen flatly denied all these accounts (Warne T. 2412-2414, Baggs T. 2412-2414, Baird T. 2448-2449, Jones T. 2424-2434).
 13. It was never suggested to Warne, Baggs or Jones that their accounts were deliberately untrue. It is difficult to see any rational basis on which that could be asserted. Moreover, both Baggs and Jones made records of the events within a short time afterwards, and these were obviously independent of each other.

(Baggs Ex NNNNN 19/11/89, Jones 15/9/89 T. 3728-3732).
(Baggs' document was not known at the trial).

14. There is an overwhelming improbability that these witnesses could have recorded these accounts unless Mrs Whalen had spoken as they said.

FURTHER DISCUSSION
THE APPREHENDED VIOLENCE ORDER

15. At Roseanne Catt's trial in July 1991, Mrs Whalen was insistent that she had not sought this order because of any real fear of Barry Catt, but only because of pressure from Roseanne Catt (T. 2444). However, this was not consistent with what she had told Inspector Murray on 14 November 1989 (Ex LLLLL), where in explaining what had occurred in the meeting with Sergeant Thomas and Detective Paget on 23 August 1989, she said that she told them she had made the application "Because of all the things that were happening to me, threatening notes, and Barry's behaviour I wanted to keep him away from my home." (para 12).
16. The whole scheme of the conversation which follows involves Thomas persuading Mrs Whalen that contrary to her belief, Barry Catt was not responsible, to the point where she told Inspector Murray "... at that stage, I started to realise myself, that Barry Catt wasn't as guilty ..." (para 15). The statement which she signed on 23 August 1989 explaining her withdrawal of the summons says:

"3. I have had a number of incidences over the last eight or nine months, including prowlers, telephone calls, ripped flyscreens, typed notes, newspapers forming words, left at my place and has caused me and my family great worry and concern and left us

continually frightened of what was going to happen next.

4. Because of what I have been told by Roseanne Catt, over this period, I blamed Barry, for being responsible, he didn't do anything to help matters, because of the way he has been and acted. I did have an altercation with him and now, having talked to you, I don't feel the need now to proceed with my action against Barry and I intend to withdraw it." (Ex LLLLL)
17. Mrs Whalen was shown this statement by Inspector Murray and asserted that it was true. Similarly, another statement made on 23 August 1989, the purpose of which appears to have been to record Roseanne Catt saying she intended to obtain a gun, situates that in a context in which Mrs Whalen raises the subject of the summons, and again unequivocally portrays herself as fearful of Barry Catt:
 - "4. I raised the subject about Barry and about me taking the summons out against him saying 'I'll have to go on with it, I'll have to stand my ground, to show him that I've had enough of this shit.' She said, 'Yes, you've got to. That's how I feel. I'm going to Sydney to get a gun to protect myself'. I commented by saying 'It would be useless of me having one because I might shoot some poor innocent bugger.'" (Ex LLLLL)
18. It is clear that Mrs Whalen, in her statements on 23 August 1989 and 14 November 1989, was portraying herself as in fear of Barry Catt when she applied for the apprehended violence order. By the time of the trial, her account had changed radically. There was no longer any fear, she went only "because they told me I had to go there." (T. 2444). Certainly, she had recorded in her statement of 23 August 1989 "I took the action out after being advised to by Roseanne", but in the context of that and the other statement of the same day quoted above, that was representing Roseanne Catt merely as a source of advice to resolve a problem of genuine fear of Barry Catt.
19. The evolution in her account between that period (and it is significant that she maintained a constant account over the period of several months in late 1989) and the trial is similar to changes in her account of other matters. In fact, this change had occurred by the time of Barry Catt's trial in December 1990, where, when confronted with the paragraph beginning "I raised the subject about Barry and about me

taking the summons out against him", she said that there had been a mistake, and the statement had been worded wrongly (Ex JJJJ 509). In the context of the other statement of the same day, and her account to Inspector Murray, that was clearly nonsense, and a lie.

20. During the current hearing, Roseanne Catt's sister Faye Klarenbeek gave evidence that Mrs Whalen "practically begged me to go with her to take out an AVO against Barry Catt and I said 'Why?' you know because I was not that fussed on going, and she said he was leaving threatening pieces of paper on her door every day and she was petrified and she needed to do something about it, so then I agreed to go with her." (H2144).
21. Mrs Whalen seems now to acknowledge that she in fact had been frightened of Barry Catt at that time (H2020-2021).

THE STATEMENT DATED 27 JULY 1989

22. Roseanne Catt said that Mrs Whalen had brought some notes to her home on 26 July 1989. These were typed up by Noel Jago, Mrs Whalen took away the completed document and brought it back the next day. Roseanne Catt then added the last three lines in printing, and made a phone call to find out whether there was a justice of the peace at Crossman Brown and Jolly, who were her accountants. On discovering that there was, she said that she went there with Barry Catt's daughter Sharon and Mrs Whalen, and that Mrs Whalen signed the statement at the front counter in front of Frank Farrar. Noel Jago (now dead) gave evidence at the trial supporting Roseanne Catt's account. Sharon Catt gave similar evidence (T. 3192-3194).
23. Mr Farrar witnessed a signature on a document in such circumstances that day. But when police brought Mrs Whalen to him on 20 September 1989, he said she was not the woman. He had never previously seen the woman who signed the document. She signed it in front of him in a quite normal way (T. 2378). There is no evidence of Mr Farrar having any reason to pay particular attention to the occasion, and indeed he said at trial "It was just something that I did. I must admit I didn't recall it." (T. 2370).

24. Mr Farrar made a statement to police on 13 December 1989 (Ex AQ) in which he gave descriptions of the women he had seen on 27 July 1989 and 20 September 1989. They were rudimentary:
- July "about 29, 5'5" tall, plumpish build, light brown to fair hair, she had a fair complexion, she was scruffily dressed and spoke in an uneducated manner."
- September "early thirties, average build, I think she is about 5'6" and was considerably better dressed and presented than the other woman that I saw on 27 July 1989."
25. On the face of it, putting aside the difference in dress standard, there is minimal if any real difference between these as descriptions. Mr Farrar at trial when shown Mrs Whalen and asked "Does she bear any resemblance to the lady you saw on that particular day?" said "Some, today, yes." (T. 2367). Then when asked "In terms of her height, the same height as the other person you saw?" he replied "No, the other person was taller." This was the only distinguishing characteristic he specified, and is clearly wrong, because on his own estimate, much closer to the events, the first woman was 5'5" and Mrs Whalen about 5'6". Thus, at that time he did not regard the other person as taller.
26. Mrs Whalen herself acknowledged that the signature on the statement looked like hers (T. 2385). Christopher Anderson, a well accredited document examiner, was supplied with numerous specimen signatures of Mrs Whalen, and found no evidence that the signature on the statement was anything but genuine (T. 3322).
27. No contrary evidence was called. Indeed, Mr Thomas said that he had not even had a handwriting examination done. (T 1972). More notably, there has never been any attempt to suggest who the woman of 27 July 1989 could have been, if not Mrs Whalen. No doubt the assiduity of the investigation would have considered all of Roseanne Catt's known associates.
28. It could be inferred that Barry Catt came to know of the statement and to regard it as an authentic statement by Mrs Whalen. In a statement made on 15 November 1989 for the purpose of the prosecution of Mrs

Whalen (Ex MMM) he said:

"Some few months after I was married to Roseanne, she began making serious allegations against me concerning my behaviour with my children, which resulted in me being charged by Police with serious matters. I am aware that Marie became very close to Roseanne over these matters and was putting a lot of pressure on her. I am aware that Marie was a proposed witness against me in those matters. I am also aware that Marie later retracted those allegations and told the truth. These matters have caused Marie a lot of stress." (para 6)

29. Two further aspects deserve consideration. First, the improbability of there being anyone, let alone a woman of about the same age, who, signing in ordinary conditions, could create a signature indistinguishable from that of Mrs Whalen, and second, the absurdity of the whole exercise if the person was not Mrs Whalen. The only conceivable role for such a statement would be as the foundation for evidence in the trial of Barry Catt. If Mrs Whalen, as she claimed, did not know of the statement, she would obviously say so when approached on the faith of it.
30. Finally, bearing in mind that the first occasion on which Mr Farrar's rejection of Mrs Whalen as the woman of 27 July 1989 was ventilated publicly was the trial of Barry Catt in December 1990, it is notable that Mrs Whalen presented at that trial in a markedly different appearance from her normal one. Her hair, Mr Farrar agreed, was jet black and spiked (T. 2373). Yet Mrs Whalen at Roseanne Catt's trial said "I have never had jet black hair ... my natural colour is brown and it is not black. Other than being blond I have never died my hair black." (T. 2412). She maintained this at the current hearing (H2077-2078).
31. However, photos of her taken in Mulawa Women's Prison late in 1990, around the time of the trial of Barry Catt, show that she did indeed have very short hair, dyed black at that time (Ex WWWW). Thus her evidence at Roseanne Catt's trial and the current hearing on this point was false. Clearly, she wished and still wishes to conceal a stratagem which she used to ensure that Mr Farrar would not identify her.

THE EVENTS OF 23 AUGUST 1989

32. There are significant aspects to this matter in addition to those considered above.
33. Mrs Whalen at Roseanne Catt's trial was insistent that she was not scared during this incident.
- Q. You were having concerns about whether or not these two men were policemen, weren't you?
- A. No.
- Q. Did you wonder that they may not have been policemen?
- A. No, because I went with them.
- Q. I appreciate that but at the time when you went with them you thought they were police officers, is that correct?
- A. That is right.
- Q. When you got to this strange house you started to wonder whether in fact they were really policemen, didn't you?
- A. No." (T. 2392)

* * *

- "Q. You thought these two men might have been 'hit people'?
- A. No I did not.
- Q. Well then, didn't you think that there might have been some problem with these two men because of what Barry had told you about knowing 'hit people'?
- A. No, because everything I could see plainly marked out to me they were detectives.
- Q. Do you remember you told Insp Murray that 'I started thinking that this 'was for real'?
- A. No.
- Q. 'Was for real', what did you mean by that expression?
- A. I do not remember saying that, so I don't know.

Q. Did you ever use that expression - -?

A. Could have - -

Q. 'This is for real'?

A. It is not your - what I'd say commonly but I could have.

Q. In the context of 'hit people' that would be an expression you would use, wouldn't it?

A. Possibly.

Q. You were frightened because you thought there was a possibility you would be killed?

A. No.

Q. Didn't you think that?

A. No." (T. 2394).

34. This is an evolution in her account similar to that in her account of the apprehended violence order. In most of the accounts which she denied, detailed above, she had spoken of being in fear of the police on 23 August 1989.

35. To Inspector Murray in December 1989 she had said the exact contrary of the answers reproduced above:

"At this stage I was crying because I did not know whether they were real police or not. I was scared mainly because Barry had spoken to me about knowing 'hit people.' and I started thinking that this 'was for real.' I was frightened I would be killed"
(para 11).

36. She also denied at trial having told Michael Jones several things which she had admitted at the committal having told him. The essential difference was that at the committal she admitted having told him some things about what had occurred, whereas at the trial she denied having told him anything.

"Q. Did you mention to Mr Jones that Det Thomas had come to your home on 23 August?

A. No.

Q. You didn't tell him that?
A. No.

Q. Well, what did you tell him?
A. Not very much at all. He asked me would I make a statement. I said, 'No.' We sat for a good ten minutes and talked about why I should and why I shouldn't do it. My husband came back into the room and Mr Jones shut up and we left. He didn't want to talk to me in front of my husband." (T. 2425).'

* * *

Q. "Did you tell Mr Jones at that interview that you had spoken to Det Thomas?
A. No.

Q. Are you sure about that?
A. Yes, positive." (T. 2425).

* * *

"Q. You told Mr Jones that you were driven to a house at the back of Chatham, did you?

A. No.

Q. You didn't?

A. No, I didn't.

Q. Did you tell Mr Jones that?

A. I told him I had spoken to people but he had no idea who or where.

Q. Did you tell Mr Jones where you had been taken by the police?

A. No." ((T. 2428).

* * *

"Q. Did you tell Mr Jones you were taken inside the house?

A. No." (T. 2429).

37. In fact, as the prosecutor conceded, all of these had been answered "Yes" at the committal (T 2426, 2427, 2428, 2429, 2430). She also

denied having told Mr Jones that she had spoken to a solicitor, Merrick Spicer (T. 2434), whereas at the committal she had admitted having told him this (Ex AO).

38. The clear pattern emerges in Mrs Whalen's evidence of beating the path of retreat. That in some respects was continued in her evidence at this hearing, where she denied persistently that her husband had ever accompanied her to the Department of Family and Community Services, twice giving as a reason that he would not have taken on anybody else's children (H 2037, 2049, 2062). Yet she had previously said that he had come with her (T. 2413, 2456), as had other witnesses.
39. Mrs Whalen's evidence on the questions considered so far did not go directly to any of the charges. But it formed a vital part of the background. At the time of the trial, her various prior inconsistent statements as to, for example, whether she was afraid of Barry Catt at the time of seeking the apprehended violence order, and the events of 23 August 1989, under the rules of evidence then in force, went only to her credibility. The judge so instructed the jury (SU e.g. 126.1). Subsequently, pursuant to section 60 of the Evidence Act 1995, such statements are evidence of the truth of what is asserted.
40. The conclusions which are comfortably available on the balance of probability are:
 - (i) Mrs Whalen was the person who signed the statement dated 27 July 1989.
 - (ii) Mrs Whalen was in fear of Barry Catt when she sought the apprehended violence order on 3 August 1989.
 - (iii) Mrs Whalen was in fear of the police who took her to the house in Milligan Street on 23 August 1989, and only signed the statements because she was frightened.
41. Inherent in this is that she changed her position, changed sides it could be said in the context of the case, and lied about her original position in an attempt to conceal that change. The obvious explanation for the change is that she was threatened by the police. This reflects on the manner generally in which evidence against Roseanne Catt came into existence.

-
42. Mrs Whalen also lied about receiving phone calls from Roseanne Catt. She testified to having done so in various circumstances (T 2309, 2312, 2313. See also Ex LLLLL statement of 8/11/89, paras 13 and 14). These calls must have been in 1988 or 1989, because Mrs Whalen had not known Roseanne Catt before that (T 2309). Roseanne Catt denied these calls, and said that Mrs Whalen had no phone (T 2804). The response of Telstra to a subpoena seeking records of a service to Mrs Whalen's address, or any service under the names of herself or her husband, shows that Roseanne Catt was right (Ex AP).
 43. There is also evidence that Marie Whalen bore Roseanne Catt ill will. While in prison Whalen asked Kelly Perez to "put her in hospital" (H 1908) and generally encouraged other inmates to cause trouble for her and bash her (Strachan, H 2337).
 44. On the possession of a firearm, Mrs Whalen's evidence went directly to the charge. She said that Roseanne Catt had said she was going to Sydney to buy a handgun. In one of the statements made on 23 August 1989, this conversation was located on the previous Saturday, 19 August. In the same statement, a similar conversation was placed that very morning, that is, 23 August. Clearly, on this account, the purpose expressed in the first conversation had not been satisfied by the time of the second. These conversations are inconsistent with Roseanne Catt's possession of a handgun at the time of her arrest early on the morning of 24 August, because there was not time to have gone to Sydney.
 45. At the current hearing, Mrs Whalen's evidence about Roseanne Catt and a handgun evolved in a telling way.
 46. The first incident in the statement of 23 August 1989 was located at Mrs Whalen's home on a Saturday morning, with her husband and children present when Roseanne Catt called in. The incident detailed to Detective Boyd-Skinner on 9 April 2003 is located at the same place, but on a Sunday morning, and Roseanne Catt is said to have called around with Barry Catt's children. Mrs Whalen said that she showed her a handgun in her handbag. (Ex 41, A57). She claimed also to have said this at the trial (H 2033, 2045). She did not in fact say so, and it is inconsistent with her previous evidence.
 47. What it points to is the absence of a real memory of the event, a feature

inherent in all fabricated evidence, and a danger to all those who propound it, particularly when required to restate their fiction on a later occasion. This whole episode suggests that in making her statement on 23 August 1989, Mrs Whalen was merely responding in terror to what she understood to be the requirement of the police.

48. Several aspects of Mrs Whalen's evidence at the current hearing are remarkable. She said that while in prison she received a visit from Barry Catt, his then girlfriend Kerrie Newman, and Adrian Newell on the day of the verdict in Roseanne Catt's trial (H 2070, 2071, Ex 41 A 157). In fact the prison records show, though there is no importance in the minor difference in date, that it was two days later, 13 September 1991. She said that it was by way of a victory visit (H 2071, Ex 41, A 160).
49. This may well indicate her importance as a witness in the eyes of the visitors.
50. She told Detective Boyd-Skinner that Sergeant Thomas and Detective Paget had told her in relation to her own case "they'll be there for me on the day and not to worry because more than likely 'you'll go home', 'you've got a lot of good people out there backing you' - that sort of stuff, meaning themselves and on the day there was nobody." (Ex 41, A97, H 2062 lines 26, 27).
51. Adrian Newell gave evidence at Mrs Whelan's sentencing, and said that he had first met her in 1982, and come to know her more personally since late 1987 or so. (Ex 13, pages 6-7). Mrs Whalen denied this. "The first time I met Adrian Newell was around the time that Roseanne was arrested and he was introduced to me as a friend of Barry's" (Ex 41, A 50). She repeated this in evidence (H 2030). She had said at the trial of Barry Catt in December 1990 that she had known Newell for "probably 12 months" (Ex JJJJ, 494). At this hearing, she said of her sentencing: "Adrian Newell gave evidence apparently. I was unaware of that, and to this day I don't know why he had any input." (H 2042).
52. She also said that after a visit in prison from Adrian Newell, she had been told by a prison officer as he was leaving that his name was John Taylor (Ex 41, A 90, 149, H 2047, 2061, 2065). She identified this as a visit recorded in the prison records under the name of John Taylor on

31 July 1990. This cannot be correct. A report dated 3 August 1990 from John Taylor, psychologist, tendered at Mrs Whalen's sentencing hearing, recorded that he had interviewed her on 31 July 1990 (Ex 43).

53. There is another aspect of her evidence at this hearing which is incorrect, and seems to indicate at least a tendency to distort events so as to reflect unfavourably on Roseanne Catt. She told Detective Boyd-Skinner "There was one incident where Roseanne, again, it's just manipulation, wanted Judge Matthews to subpoena my eldest daughter who had no input whatsoever that Roseanne was quite aware the only way to get me was through my children" (Ex 41, A 128). She repeated and expanded on this at the hearing (H 2039-2040). This is a major distortion of what happened at the trial. The person who raised the possibility of calling Mrs Whalen's eldest daughter was the Crown Prosecutor (T. 2464).
54. Mrs Whalen also said that she had received a phone call from a police officer whose identity she could not recall, threatening to subpoena her children to her own trial if she did not co-operate by giving evidence at Roseanne Catt's trial. She regarded this as blackmail and intimidation. (Ex 41 Q and As 109-125, H 2006-2008, 2039-2042, 2044, 2066-2068).
55. She said that she thought Sergeant Thomas had a "little bit of a vendetta maybe" against Roseanne Catt, and "obviously disliked her in a big way" (Ex 41, A 104). She said in evidence "Peter Thomas would beat Jack Ripper, whoever was in the police department." (H 2047).

Tom Melanby

whalen.6jan