

Part 9 - Other material relevant to the defence case of collusion

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Having reached conclusions with respect to the process of investigation and the evidence of Ms Whalen, Davidson ADCJ considered the effect of this evidence and other evidence on the defence case of collusion or conspiracy to wrongly convict the appellant. His Honour considered firstly the relationship between the appellant and Det Sgt Thomas and the detective's relationship with Mr Catt.

"Background

Det Sgt Thomas

Det Sgt Thomas had been stationed at Taree when, in 1983-4, he had investigated a fire in a delicatessen in which Ms Catt, then known as Roseanne Annetts, with her partner Mr Douglas Annetts, had an interest. The matter was "no billed".

There followed complaints made by Ms Catt against Det Sgt Thomas. There were some twenty-five to thirty of these complaints made by Ms Catt and another person, Mr Errol Taylor.

At Roseanne Catt's trial, Mr Thomas, as now referred to, having resigned from the police force on 19 January 1991, asserted that he bore no animosity towards Ms Catt as a result of these complaints and that they had nothing to do with his resignation (H.Ex 2.6; T/T p1777-8).

Mr Thomas nevertheless conceded that the making of the complaints did cause him concern. He said that since he had met Ms Catt in 1983, he had spent six years of his life "ducking the internal security police and justifying my existence". He denied, however, that he wanted to "pay back", or had "an axe to grind" in

relation to Ms Catt (H.Ex 2.6; T/T p1780-3).

It was with this background of animosity between them that he undertook charge of the investigation of the matters alleged against Ms Catt in 1989. He said he had done so because he had been requested by Det Sgt Duffy and also because he knew the Taree area (H.Ex 2.6; T/T p2058).

The bias of Det Sgt Thomas against Ms Catt when he took charge of the investigation was made apparent to the jury at her trial. Her Honour told the jury that by the time the investigation commenced, they "would be well entitled to infer that Peter Thomas would have been less than objective on the subject of Roseanne Catt. Indeed you may well think that if there was any member of the New South Wales Police Force who should not have been assigned to this investigation, in particular not assigned to be in charge of it, it was Detective Sergeant Peter Thomas, who had this prior antagonistic relationship with Mrs Catt" (S/U p121).

Det Sgt Thomas and Mr Barry Catt

As to his relationship with Mr Catt, Mr Thomas said that whilst previously stationed at Taree he had met Mr Catt but had only done business with him on two occasions that he could recall, when Mr Catt had done work on a vehicle which he owned and when he had sold Mr Catt a ski boat. He had also come across Mr Catt at "various venues socially" (H.Ex 2.6; T/T p1780).

Mr Catt said that Mr Thomas had never been in his house at 1 Cornwall Street until the arrest of Ms Catt on 24 August 1989. He denied any visit by Mr Thomas for a purpose alleged by three of the Catt children, namely to take part in pornographic displays and to witness the Catt children being made to conduct themselves sexually with each other (H.Ex 2.6; T/T p206).

He said that he had known Mr Thomas for a number of years as a "business associate".
Mr Noel Jago

Mr Jago said that he had seen Det Sgt Thomas at Mr Catt's business premises over a period of three to four years when Det Sgt Thomas had brought police vehicles for repair there. He also said that Det Sgt Thomas, Mr Catt and employees of Mr Catt would drink beer together on Friday nights.

Ms Lorraine Pearson (Catt)

Ms Pearson, Mr Catt's first wife, said that Det Sgt Thomas had come to the workshop to get work done on his car about half a dozen times between 1975 and 1982. She said that whilst she was living there, he was never invited into the house (H.Ex 2.5; T/T p1514).

Ms Sharon Napper (Clarke)

Ms Napper (Clarke) had a domestic relationship with Mr Catt after Ms Pearson had moved out lasting for about five years from 1982. She said she saw Det Sgt Thomas only once or twice at 2-8 Cornwall Street in that time and never at the house being entertained (H.Ex 2.4; T/T p1622). She said Det Sgt Thomas and Mr Catt were "mates" but she had never seen them drinking together although they had a common interest in cars and motorcycles (H.Ex 2.4; T/T p1626-7)."

The role of Mr Newell

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Davidson ADCJ summarised the evidence with respect to Mr Catt's friend, Mr Newell in the following terms:

"Mr Newell, a retired automotive engineer, had lived in Taree and its environs for many years. He first met Ms Catt in January 1987 and said

that even before marriage she was talking of having Mr Catt treated and having him "committed" (H.Ex 2.4; T/T p1229, 1257).

Mr Newell said that Ms Catt had informed him that she believed that Mr Catt was not fit to run the business and that she and her son, Mr Bridge, could build the business and run it. He claimed that at about Christmas 1988, she had told him that he, Mr Newell, should help her to get rid of Mr Catt, "then you can come over here any time you like and use the workshop" (H.Ex 2.4; T/T p1241).

Mr Newell said that Ms Catt told him of the sexual assault allegations as a further reason why Mr Catt should be excluded from the business (H.Ex 2.4; T/T p1242). He said that he had attended Mr Catt's committal proceedings in respect of the sexual assault charges in July 1989. On 31 July 1989, Mr Catt had been committed for trial. He said after that Ms Catt had spoken to him in terms that he should join the "winning side" otherwise people might think that he too had been engaged in sexual interference of the children (H.Ex 2.4; T/T p1243).

The evidence of Mr Newell to the effect that Ms Catt had made statements consistent with the Crown's case before and during her marriage to Mr Catt was supported by the evidence of a number of other witnesses. These included Ms Beverley Lyons (H.Ex 2.4; T/T p1471-2); Mr Ian Lyons (H.Ex 2.4; T/T p1443-5A); Ms Tracy Taylor (H.Ex 2.6; T/T p1418-29); Ms Amanda Marlin (Taylor) (H.Ex 2.6; T1418); Ms Julie Banks (H.Ex 2.1; T/T p1000-1, 1005, 1008-10, 1019); Mr Brian Cross (H.Ex 2.3; T/T p1202-4, 1207); Mr Barry O'Brien (H.Ex 2.5; T/T p1126-39); Ms Janet O'Brien (H.Ex 2.5; T/T p884-92).

Mr Newell had clearly formed a view favourable to Mr Catt during the disputes which developed between Mr and Ms Catt. He took an active role in arranging for a police investigation which led to Det Sgt Thomas being designated the

officer in charge of it. He then made available a house from which Det Sgt Thomas and Det Paget might interview witnesses (see para. 521) and he took an interest in the detail of, and an actual part in, the investigation far greater than usual for a civilian. For example it was he who on 30 July 1989 went to the premises at 2-8 Cornwall Street and took liquids from Mr Catt's refrigerator which, on analysis, proved to be contaminated with Lithium and Rivotril (see paras. 273-278).

At the conclusion of the trial of Roseanne Catt, he seems to have come into possession of a considerable number of the exhibits. Reference has also been made (para. 125) to his having a set of the proofs of evidence of Sharon Catt. No satisfactory explanation was put before me for Mr Newell being in possession of such materials.

Mr Newell's conduct during the course of the section 12 hearing caused me concern in that he was in touch with at least one witness after being told he should not speak to anyone about the evidence given.

Telephone Contact Between Witnesses

At the section 12 hearing, evidence of a large number of telephone calls between a number of persons was admitted (H.Ex AE, AF, AG). Mr Molomby of counsel for Ms Catt has prepared a schedule comparing the dates of the calls made and the likely parties to them with dates on which witnesses were expressly requested in effect not to communicate with any person about the case.

The phone services in question are in the name of or otherwise linked to, among others, Mr Newell, Mr Catt, Mr Thomas and the Catt children. I am satisfied on Mr Molomby's analysis that a large number of these calls were made at a time after requests were made to witnesses who were parties to these calls not

to communicate with others as to the case.

There is no evidence, however, as to what any particular person may have said to any other during the course of any of these telephone calls. This material was not the subject of oral evidence.

I have been unable to reach any firm conclusion as to the evidentiary value of this material, although it raises considerable concern as being suggestive of a possibility that there may have been improper communication between witnesses during the course of the hearing.

I have formed a view that this material should be further investigated to determine whether any criminal act may have been committed. I propose to direct that copies of the relevant documents be forwarded to the Commissioner of Police and the Director of Public Prosecutions with a view to such further investigations.

Ms Roseanne Catt

Ms Catt at the trial said that, apart from seeing Mr Newell at the workshop talking to Mr Catt on one occasion, she did not know Mr Newell and said she did not have any conversation with him of a private or personal nature (H.Ex 2.9; T/T p2764).

Mr Barry Catt's erratic behaviour

Mr Newell, as well as a number of other witnesses, gave evidence of seeing Mr Catt behave as if intoxicated during a period from shortly after his marriage to Ms Catt in August 1987. Other witnesses gave evidence of observing Mr Catt behave in this way during the first half of 1988.

There is other evidence, however, that as early as September 1986, before he had formed any relationship with Ms Catt, she had seen Mr Catt "walking around like a zombie". She said that

he appeared to be in a drugged condition "all the time". She said that Mr Catt had put this down to pills which he was being given by Mr Jago in the absence of Ms Napper (Clarke) with whom Mr Catt was then in a relationship (Evidence of Ms Jan O'Brien H.Ex 2.5; T/T p897, 899).

Mr Adrian Newell's intervention

It was as a consequence of these observations of Mr Catt's odd behaviour that Mr Newell began to suspect that Mr Catt may have been overdosed with his prescribed medication or with some other substance. It was this which led him to contact ICAC and which in turn led to Det Sgt Thomas being put in charge of the investigation."