

COUNT 9: THE PISTOL

(a) CONST COTTEE

461. Const Cottee said at the trial that, having gone to 1 Cornwall Street with the other police on 24 August 1989, she had been directed by Det Sgt Thomas to take the three Catt children then living there to the Taree Police Station where Mr Newell took them into his care. There was an issue as to how long it took her to do this and return to 1 Cornwall Street. In my view nothing turns on that dispute. It was clearly long enough for Det Sgt Thomas to have placed a gun in the en suite vanity drawer, if he did so.

462. Const Cottee said that upon her return, at Det Sgt Thomas' direction, she searched the en suite bathroom off the main bedroom occupied by Ms Catt. In a drawer in the vanity cabinet she found a fully loaded .32 calibre Hopkins and Allen revolver, the subject of Count 9 in the indictment.

(b) MS ROSEANNE CATT

463. When shown this weapon, Ms Catt's response on 24 August 1989 was to ask whether it was a toy and to state that she had never seen it before (H.Ex 2.3; T/T p1652). Through counsel at the trial her case was that the weapon must have been "planted" there by Det Sgt Thomas.

(c) THE PISTOL

464. On testing, the weapon was found to be in working order. It was said to have been manufactured in about the 1880s. It was not recorded on any official register as having been

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licensed to any person including Ms Catt as at 24 August 1989 or at all, nor had it been reported as having been stolen (H.Ex 2.5; TIT p2342-6; T. Ex ZZ). It was, however, duly entered in the record of property seized on 24 August 1989 (H.Ex HH).

(d) OTHER EVIDENCE RELIED ON BY THE CROWN AS TO COUNT 9

465. As well as the direct evidence of the finding of the weapon, the

Crown relied upon evidence from a number of witnesses to the effect that prior to 24 August 1989 Ms Catt was either in possession of a handgun or expressed an intention or desire to obtain one.

Mr Barry Catt

466. Mr Catt said he saw a Derringer (clearly not the revolver said to have been found) which, before their marriage, Ms Roseanne Annetts (as she then was) showed him at 2 Cowan Road, Taree.

467. A Derringer is a distinctive short-barrelled weapon of large calibre with two barrels mounted one on top of the other (see illustration Macquarie Dictionary 1989 Edn). Mr Catt clearly knows what a Derringer is (H.Ex 2.1; T/T p2545; HIT p764).

Ms Suzanne Miller

468. Ms Miller, Mr Catt's sister, said that about a week after the wedding of Ms Catt and Mr Catt in August 1987, Ms Catt said that she had scared Mr Catt with her gun (H.Ex 2.4; T/T p1537).

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Ms Marie Whalen

469. Ms Whalen at the trial gave evidence that Ms Catt had told her that she was going to Sydney to buy a gun to protect herself (H.Ex 2.1; T/T p2309). This evidence was enlarged upon at the section 12 hearing to the extent that she said that Ms Catt had told her that she had "got herself a gun, a handgun and she showed me. It was in her bag and she said it was to protect herself....she felt she needed it for protection and she'd use it". Ms Whalen described the gun as small with a little brown handle (H.Ex 41, Annexure J, Q&A 57).

470. The statements of Ms Whalen, H.Ex LLLLL, include one in which she refers to a visit to her home by Ms Catt on 19 August 1989 as being the occasion on which Ms Catt had told Ms Whalen that she was going to Sydney to get a gun.

471. It seems to be clear that by 23 August 1989, Ms Catt had still not carried out her stated intention of getting a gun because according to Ms Whalen's statement of 23 August 1989, "Again, today, I was Roseanne's, during conversation she said, 'I'm definitely going to Sydney to get a handgun'" (sic). Ms

Whalen makes no mention of Ms Catt showing her a handgun produced from a bag.

472. In cross-examination as to what occurred at Milligan Street on 23 August 1989 in which Ms Whalen referred to a weapon being on the table, she was shown the weapon allegedly found by the police, T.Ex HH, and gave no indication of having recognised it as any weapon produced to her by Ms Catt from a handbag (H.Ex 2.1; T/T p2396, 2440-5).

473. As already indicated, I do not regard Ms Whalen as a reliable

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witness (para. 224).**

Mr Barry O'Brien

474. Mr O'Brien said that during a conversation with both Ms and Mr Catt which appears to have been towards the end of 1988, Ms Catt had said that she possessed an automatic rifle and a Derringer.

Ms Beverley Lyons

475. Ms Lyons said that in May 1987, Ms Catt had told her that she carried a gun for her protection against a couple of police at Taree who she "could not get on my side".

Ms Barbara Chapman

476. Ms Chapman, without objection, gave evidence at the section 12 hearing which she did not give at the trial. She said she had worked for Ms Catt as a housekeeper at 1 Cornwall Street prior to 24 August 1989, having cleaned the house on three occasions. On the second occasion she said she had gone into the en suite bathroom on a date that she could not specify. She said that when Ms Catt had opened a drawer she saw a gun in it. Ms Chapman described it as "a very small handgun". She said that she could not recall the colour but there was a piece of pearl or pearlised material in the butt of the gun which is consistent with the appearance of T.Ex HH.

477. Ms Chapman said that the en suite was reached through a walk-in wardrobe. She was shown three photographs, H.Ex JJ, Nos 20, 65 and 70, taken by the police on 24 August 1989

which depicts the en suite from the main bedroom at 1 Cornwall Street being approached directly from it and not through a walk-

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in wardrobe. Ms Chapman said that that was not the en suite of which she spoke.

478. Ms Chapman was also shown the photograph H.Ex BB No. 7 which is said to include the handgun found by the police in the en suite. She gave evidence that there was nothing in the photograph which she recognised, although the weapon depicted in it fits the description she gave.

Mr Stephen Foster

479. Mr Foster is the husband of Ms Chapman's stepmother. He said he had known Ms Call from about 1985 until the early 1990s. He said he had done work as a motor mechanic for Mr Catt. Prior to 24 August 1989, Ms Catt had come to his business premises numerous times to visit his wife, Julie. On one occasion, on a date he was unable to specify, she had taken from her handbag or shoulder bag a small calibre pistol. He said it was somewhere in the region of .25-32 calibre and of silvery colour. He said it was a semi-automatic, i.e. not a revolver as in T.Ex HH.

480. Mr Foster was familiar with firearms and said it was "definitely not a revolver but a pistol" which he had seen. He gave a statement to the police on or about 23 January 2003 (HIT p1157-64).

Mr Christopher Catt

481. Christopher Catt in his affidavit of 13 March 1993 (H.Ex 23, Q&A 41-2) said, "I never saw a pistol, but I had seen a gun". Although at the Roseanne Catt trial he said it belonged to Mr Catt, he swore in his affidavit that it belonged to Ms Catt.

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482. On a 60 Minutes television programme which went to air on 28 October 2001, however, he is recorded as having said, "I saw a pistol or a part of one. It was covered up in the drawers of the en suite....) went in there one morning and she wasn't in there....looking for money, and I opened up the drawer and I just saw a handle of what looked fake but I don't know I saw

the handle of a pistol" (H.Ex 11 p7).

483. In the statement which he gave to the police assisting the Crown at the section 12 hearing (H.Ex 21) he said that when he had opened a drawer in the bathroom off Ms Catt's bedroom he had seen what he now thought was a handgun but which at the time he thought was "just a cap gun" (H.Ex 21, Q&A 217-226).

484. Christopher Catt said that he had been to Mr Newell's house at a time apparently after the trial of Ms Catt. Mr Newell had shown him a number of items which he claimed he had "got back from the courthouse". This included a photograph. He had told Mr Newell that it depicted what he had seen and asked Mr Newell whether it was, "a cap gun". Mr Newell had responded that it was not (HIT p1337-40).

. Ms Sharon Catt

485. Sharon Catt said at the trial that she had complete freedom to come and go in Ms Catt's bedroom including the en suite. She said she had opened the drawers of the vanity cabinet to take things out and put things away. She said she had never seen a pistol, real or toy, at 1 Cornwall Street (H.Ex 2.8; T/T p3096-96A).

486. In her affidavit made on 24 March 1993, Sharon Catt verified the accuracy of a statement made by her on 22 March 1993.

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She had stated at the trial that she had seen a rifle and had claimed that it was Mr Catt's. However, she now claims that was untrue and that it was Ms Catt's rifle.

487. In her pre-section 12 hearing recorded interview with the police (H.Ex 27), Sharon Catt referred to Ms Catt having a rifle and "a little pistol". She said Ms Catt produced a pistol at Mr Les O'Brien's property. She said that Ms Catt had said, "She was going to get a pistol. That she had a pistol. That she had a pistol that she put in her handbag and she'd use it if she needed to" (sic) (Q&A 238-249).

488. Sharon Catt gave evidence of a conversation which she said took place between Ms Catt and Mr Vernon Taylor at 1 Cornwall Street. This refers to the circumstances relied upon by the Crown in relation to Count 7 and may be taken as having

occurred in about June 1989. She said that Ms Catt had asked Mr Vernon Taylor inter alia whether he could get her a pistol. Her attention was drawn to the fact that she had previously said that Ms Catt already had a pistol. Sharon Catt responded incongruously, "It was the same pistol" (H/T p1458-60).

Ms Julie Catt

489. Julie Catt said, "We were told" by Ms Catt "not to say anything about her little gun". She told the police at the pre-section 12 hearing interview that she had seen a gun in what she described as a "dresser drawer". She states it was small "like a little pistoly gun". She drew a sketch of what she said she had seen. The sketch is Annexure B to her recorded interview with the police, H.Ex 18. Any resemblance to either the revolver said to have been found or to a Derringer is conjectural.

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490. At the section 12 hearing Julie Catt said that the drawer in which she claims to have seen the gun was of a dressing table near the bed in Ms Catt's bedroom, not in the en suite bathroom. She too said that the bedroom was not always kept locked (HIT p1263-5). She also referred to having seen Ms Catt shooting with such a gun on a farm (HIT p1271).

Mr Tony Catt

491. Tony Catt was not called at the Roseanne Catt trial. Although he is recorded as having taken part in the 60 Minutes television programme (H.Ex 11) he makes no mention of a gun. He said he had not seen a gun in the house but spoke of going to a farm where Ms Catt would use a .22 weapon and shotguns, "and a little hand pistol" to shoot at cans (H.Ex 19, Q&A 119-159).

(e) COUNT 9: EVIDENCE AT THE SECTION 12 HEARING IN THE CASE FOR MS ROSEANNE CATT

Mr Douglas Annetts

492. Mr Annetts was not called at the trial. Mr Catt had said that the "Derringer" (so described although he nevertheless identified the pistol, T.Ex HH), was shown to him by Ms Roseanne Annetts (H.Ex 2.1; TIT p167), in the presence of Mr Annetts.

493. At the section 12 hearing Mr Annetts said that he had never seen Ms Catt with a pistol or revolver of any kind. Although contacted by the police after the arrest of Ms Catt he said he was never asked to make a statement nor was he asked to give evidence.

494. Both counsel for Ms Catt submitted that the failure of the police

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to obtain a statement from Mr Annetts was "a deliberate choice to deprive the defence of vital evidence".

495. A statement ought clearly to have been sought by the police and made available to the defence. It was open to legal representatives for Ms Catt to have obtained a statement from Mr Annetts, however. His evidence is not in my view fresh, there being no explanation for the failure to call him at the trial

Mr Peter Bridge

496. Mr Bridge said that he had never seen Ms Catt in possession of a gun; nor was he aware of any cap guns in the house (HIT p1652, 1674).

Ms Julieanne Bridge

497. Ms Bridge also said that she had never seen her mother in possession of a gun. She said her mother had never mentioned a pistol to her (HIT p1622, 1631-2).

Ms Faye Klarenbeek

498. Ms Klarenbeek, one of Ms Catt's sisters, said she had never seen Ms Catt with a gun and spoke of their brother, Keith, having been accidentally shot, as supporting the unlikelihood that Ms Catt would have a firearm in her possession. She spoke of Ms Catt having a dislike for guns (H/T p1715-6, 1725).

Ms Joy McGregor

499. Ms McGregor, also Ms Catt's sister, said she had never seen Ms Catt in possession of a firearm. She said she had never seen any guns at 2 Cowan Road whilst Ms Catt lived there with

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Mr Annetts (H/T p1735, 1740-1). Mr Annetts, however, said he did have sporting rifles and shotguns locked in a cabinet whilst he lived at Cowan Road with Ms Catt (H/T p1771).

500. I do not regard the evidence of Mr Peter and Ms Julieanne Bridge, Ms Klarenbeek and Ms McGregor as being fresh. These witnesses could have been called at the trial subject to some reservations as to Mr Bridge in light of his status as an alleged accomplice awaiting trial.

Mr Peter Caesar and Ms Leanne Cheers

501. The evidence of Mr Caesar and Ms Cheers is clearly fresh. It is evidence not only of a continuing harbouring of ill-will by Mr Thomas against Ms Catt but more specifically of his having admitted to Mr Caesar, soon after he gave evidence at Roseanne Catt's trial, that he had "planted a gun" on her. (the evidence is more fully dealt with at paras. 403-414).

502. If the jury had entertained as a reasonable possibility that Mr Thomas may have said words to that effect to Mr Caesar, it may have resulted in her acquittal of Count 9. It may also have had repercussions favourable to Ms Catt as to the other counts.

Ms Roseanne Catt

503. Ms Catt denied that she had ever possessed a handgun as deposed to by various witnesses and also denied conversations indicative of an intention that she should obtain one. Notwithstanding directions given as to the necessity to consider each count separately, an adverse finding as to Count 9 is likely to have reflected on her credit generally and hence on her substantive response to the Crown's case. I accept the

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submissions of Mr Molomby in this respect.**

(f) THE PERIPATETIC ALCOHOL

504. Both of counsel for Ms Catt relied on Const Cottee's evidence that when she returned to I Cornwall Street, having delivered the Catt children to Taree Police Station, she was directed by Det Sgt Thomas to search the en suite, the implication being that it had not yet been entered by other police.

505. Const Cottee said that she had found bottles of alcohol underneath the sink.

506. H.Ex JJ, No.s 20, 65 and 70, are photographs showing a chest of drawers in the main bedroom. In photograph No. 20, all of these drawers are closed and on top of the chest of drawers, there are depicted a number of items including bottles and glass containers. Det Parkes agreed that Photograph No. 20 was an "establishing shot" i.e. indicating the position of items before the search of the chest of drawers commenced. Photograph No. 65 shows a male police officer searching the bottom drawer of the set of three (HIT p611-2).

507. A comparison of No. 20 and No. 65 shows that a number of items had been moved between the taking of these photographs. Most importantly, three bottles of alcohol, two marked "Toro" and one marked "Black Douglas" depicted in No. 20, are not depicted in No. 65.

508. The inference counsel for Ms Catt seek to have drawn is that the three bottles of liquor were removed from the top of the chest of drawers between the taking of the establishing shot No. 20 and the commencement of the search of the en suite by

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Const Cottee and put under the sink, indicating that one or more police officers had gone into the en suite before Const Cottee.

509. These submissions depend on the assumption that the liquor bottles found under the sink in the en suite were the three which are depicted in photograph No. 20.

510. At the section 12 hearing, Const Cottee said that in searching the en suite under the sink she saw three bottles of alcohol. She could not remember precisely what sort of alcohol the bottles indicated. She was shown a photograph, apparently Photograph No. 20, and said that the bottles depicted on the top of the chest of drawers were those that she had seen under the sink. She said that she could not recall if she herself took them out but she did recall that they were put on top of the chest of drawers and the scientific officer took a photograph of them (HIT p515).

511. If Photograph 20 is, as Det Parkes deposed, an establishing shot indicating the position of items on the chest of drawers before the search commenced, and Const Cottee is accurate in her evidence that the bottles depicted in Photograph 20 were what was taken from under the sink, then there is obvious merit in the submission of counsel for the appellant. The bottles could only have got there by the act of a police officer engaged in the search. There is, however, no other photograph in evidence before me indicating the later return of the bottles to the top of the chest of drawers. The only photograph depicting the bottles on top of the drawers in evidence is Photograph 20. If that is the photograph which Const Cottee says was taken, this is contrary to the evidence of Det Parkes and if accepted the submission of counsel is not soundly based. The evidence

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