

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

689. The Crown's case as to the first count in the indictment was that on 2 May 1988, Ms Catt, Christopher, Sharon and Julie Catt, Mr Bridge, and Mr Golds, an apprentice employed in Mr Catt's business, had gone to the house of Ms Mary Warwick, Mr Catt's sister. There was a verbal altercation at the house following which Ms Catt and those accompanying her had got into Ms Catt's vehicle.

690. At about this point Mr Catt arrived. There was a further verbal exchange between Ms Catt and Mr Catt. Ms Catt got out of the car as did Mr Bridge and Mr Golds. The verbal altercation which continued then developed a physical aspect in the course of which, whilst Mr Bridge and Mr Golds were holding Mr Catt on the ground, Ms Catt picked up a large rock from Ms Warwick's garden and struck Mr Catt with it on the head and on the back.

691. The case for Ms Catt was that following the verbal altercation with Ms Warwick and whilst Ms Catt and those accompanying her were sitting in her vehicle, Mr Catt arrived and in an exchange with Ms Catt who was sitting in the car, he struck her on the face. It was this alleged assault which was the basis of the private prosecution which Ms Catt initiated.

692. There followed the altercation in which Mr Catt was being restrained on the ground by Mr Bridge and Mr Golds, and Ms Warwick wielded the rock unintentionally striking Mr Catt with it. 693. At the trial, the version for the Crown was supported by the

693. At the trial, the version for the Crown was supported by the

. P-182

evidence of Mr Catt, Ms Warwick and Mr Golds. That of Ms Catt was supported by her own evidence and that of the three Catt children.

694. Mr Bridge, as previously canvassed, was not called in the trial of Roseanne Catt. This led to the learned trial judge giving the jury the Jones v Dunckel direction to which reference has already been made. Her Honour also explained to the jury Mr Bridge's privilege against self-incrimination having regard to the outstanding charges which he faced (S/U p31-2).

695. On the day of this "rock" incident, 2 May 1988, Mr Catt made a statement at the Taree Police Station consistent with the Crown's case (T.Ex R). Ms Catt also made, at 12.45pm, a statement in which she asserted that the incident occurred at about 9.30am.

696. Having regard to the evidence that the distance from Ms Warwick's house to the Taree Police Station is only a matter of a few minutes drive, the time between the incident and the making of Ms Catt's statement assumed some importance, because it was the Crown's case that it was during this interval that the three children, Christopher, Sharon and Julie Catt as well as Mr Golds were prevailed upon by Ms Catt to tell lies.

697. At the section 12 hearing the three Catt children gave evidence supportive of the Crown's case including that they had been prevailed upon by Ms Catt to give an untrue version at the trial.

698. As to Count 2, since Ms Catt had maintained her own version in evidence during the course of the private prosecution, her conviction on Count 2 followed inevitably from her conviction on Count 1.

. P-183

(a) CONCLUSIONS AS TO COUNT 1

699. As pointed out in another context, her Honour directed the jury that unless satisfied beyond reasonable date that the children were lying in conjunction with and at the instigation of Ms Catt, they should acquit the accused (S/U p191). I have already expressed the view that this direction went beyond their evidence as to the sexual assault allegations and extends to other aspects of evidence given by them, including the "rock" incident.

700. It is clear from the jury's verdict as to Counts 1 and 2 that they did reject the version which the three Catt children were then giving as not being reasonably possible versions of events and that they accepted the evidence of Ms Warwick, Mr Catt and Mr Golds. The version now given by the three Catt children at the section 12 hearing is consistent with the jury's verdicts.

(b) WAS THE INDICTMENT FAIR?

701. A question has been raised as to the fairness of the indictment having regard to the fact that as well as a perjury count it also

contained a number of other counts for serious criminal offences in a trial in which the credibility of Ms Catt as a witness would be likely to be crucial.

702. Having made a successful application to sever the trials of Mr Bridge and Ms Catt and after hearing an outline of the Crown's case given in the absence of the jury, senior counsel for Ms Catt announced that he had decided not to proceed with an application for severance of "any of the charges" (H.Ex VVVV; TIT p1).

. P-184

703. No ground of appeal was taken in 1993 as to any possible prejudice arising out of multiplicity of charges or the inclusion of a perjury charge with other very serious charges in a trial in which Ms Gaffs credibility was likely to be crucial.

704. The current grounds of appeal assert unfair prejudice to the appellant arising out of "multiplicity of the charges" (Ground 1(b)). No factual issue appears to arise for my determination as to that ground of appeal.

(c) MR SHANE GOLDS: THE SECTION 12 HEARING

705. A factual issue which does arise for determination specifically in the context of Counts 1 and 2, relates to the evidence of Mr Golds.

706. By the time Ms Catt was arrested on 24 August 1989, Mr Golds, as well as Ms Catt and the three Catt children, had all given evidence in the case for Ms Catt in the private prosecution. In doing so Mr Golds had specifically denied the version propounded on behalf of Mr Catt and asserted that given by Ms Catt (see H.Ex ZZ; TIT p19).

707. Mr Golds' evidence was given on 3 July 1989, substantially in accordance with a statement he had made to a solicitor on 21 May 1988 (Pt H.Ex 0).

708. On 23 August 1989 Mr Golds was taken from his then place of work by Det Sgt Thomas and Det Paget to the house at Milligan Street where Mr Golds made a statement to the effect directly contrary to that which he had previously maintained and now stating inter alia that it was Ms Catt who had struck Mr Catt with the rock (Pt H.Ex 0; H.Ex 2.3; TIT p762-848).

. P-185

709. Mr Golds' explanation at the trial for the consistently pro Ms Catt versions he had given prior to 23 August 1989 was that Ms Catt had said in the car to all the other occupants on the way to the police station, "If anyone asks, you are going to have to make a statement it was Mary (Warwick) that had hit Barry over the head with a rock and Mary was the one who was getting abusive". He claimed at Roseanne Catt's trial that she had said this more than once (H.Ex 2.3; T/T p769).

710. Mr Golds asserted that after the initial visit to the police station and then going to Dr Walman's surgery where Ms Catt was attended to, they had gone to 1 Cornwall Street before returning to the police station where, according to Mr Golds, she had told them "what to say again". He claimed that she said this to each of the other occupants of the car. He said that she also told him that when he gave a statement to Mr Hook, the solicitor who subsequently presented Ms Catt's case at the Taree Local Court, he should put in the statement that it was Ms Warwick who hit Mr Catt with a rock. He claimed that Ms Catt had also said to him, "If you don't tell the story the way I told you to, you will lose your job" (H.Ex 2.3; T/T p769-70).

711. At the trial, Mr Golds said that he had continued to work at Mr Catt's motor body repair shop until approximately October/November 1988, when, following a conversation with Ms Catt, he had then taken employment with a man named Mr Paul Walton. Before he left Mr Catt's employment he claims that Ms Catt had asked him if he needed any money to "knock Barry off" or whether he knew "of anyone else who will". He said he had told her that he did not to both questions (H.Ex 2.3; T/T p779-80).

712. Mr Golds claimed that on 3 July 1989, the morning on which he

. P-186

had given evidence at the Local Court, Ms Catt had spoken to him in the presence of Mr Bridge and the three Catt children who were yet to give evidence. He claimed that she had read through the various statements and had said, "Stick with the story and we will be right, we will win the case" (H.Ex 2.3; T/T p781). At the trial he was shown a transcript of the evidence he had given in the Local Court (T.Ex 8; Pt H.Ex 29) and affirmed

it's accuracy but said that the version given was not true (H.Ex 2.3; T/T p782).

713. Det Sgt Thomas said at the trial that he had received legal advice as to the calling of Mr Golds as a Crown witness at Roseanne Catt's trial. No such documented advice was in evidence at the trial. At the section 12 hearing, however, there was admitted into evidence a Police Department memorandum dated 23 November 1989 addressed to Det Sgt Thomas by Det Insp Rankin. It requests Det Sgt Thomas' comments as to the institution of proceedings against Mr Golds "Re an offence of perjury at the Taree Local Court on 3 July 1989" (This request seems to have been made only two days before Det Sgt Thomas had been advised by Det Insp Rankin that he was not to have any further involvement with the Catt brief: see H.Ex X).

714. Det Sgt Thomas responded to Det Insp Rankin's request by memorandum dated 18 February 1990 in which he submits that Mr Golds should be given the opportunity "to give his corrected evidence" and any decision as to the laying of perjury charges against him be deferred "until after the completion of all matters currently involving the accused Roseanne Catt" (H.Ex AB).

715. There was also admitted in evidence at the section 12 hearing a memorandum of advice by the Deputy Director of Public Prosecutions dated 5 June 1990. It recites the referral by the

. P-187

police to the DPP of the question whether perjury proceedings should be taken against Mr Golds in respect of the evidence he had given before the Local Court. The document records the agreement of the Director with the view there expressed that "at this stage" no action should be taken against Mr Golds subject to further consideration after he had given evidence in the proceedings relating to Ms Catt (H.Ex 33).

716. Although the background information submitted by the police which led to the decision expressed in H.Ex 33 was not tendered, it seems to be clear from that document that it was disclosed that the private prosecution instituted by Ms Catt was then part-heard and that it was proposed to call Mr Golds to give his revised version at the trial of Roseanne Catt.

717. Mr Golds was not extended an immunity from prosecution nor given a "use" undertaking by the Director of Public Prosecutions before giving any evidence for the Crown (see authorities cited at paras. 656-658).

718. At the trial, he was informed of his rights against self-incrimination and he again specifically denied the truth of the evidence he had given in the private prosecution (see T.Ex 8).

719. Mr Golds said that his view prior to giving evidence both at the committal proceedings and at the trial was that he might still be charged with perjury and that this had been confirmed by Det Sgt Thomas, the police prosecutor at the committal proceedings and the Crown prosecutor at the trial before he entered the witness box (H.Ex 2.3; T/T p814-21).

720. In cross-examination at the trial, Mr Golds claimed that it was partly because Ms Catt had asked him whether he "wanted to

. P-188

knock Barry off" that he became afraid and hence gave the false version to the Local Court. He agreed, however, that the statement he had made to Mr Hook, Ms Catt's solicitor, on 21 May 1988 giving substantially the account sworn to by him in the private prosecution, was made prior to any alleged conversation in which Ms Catt had spoken of having Mr Catt "knocked off".

721. He said at the trial of Peter Bridge that Mr Catt had made a complaint about him to the Apprenticeship Board and that he had terminated his apprenticeship with Mr Catt's firm in November 1988, that is, before he had given evidence on 3 July 1989 at the Roseanne Catt's committal proceedings, at which stage he was not, therefore, under threat of losing his job with Mr Catt's firm.

722. Mr Golds gave evidence at the trial of Peter Bridge on 3031 May 1995 (H.Ex TTT). There is some indication in H.Ex TTT that he had initially been charged with assaulting Mr Catt, arising out of the "rock" incident, apparently on the same basis as Mr Bridge. This charge was "no billed" insofar as it related to Mr Golds (H.Ex TTT, p122) but on what basis does not appear.

723. He insisted that Ms Catt had said to him that he would lose his

job if he did not give the account she had indicated although he understood that he could not be deprived of his apprenticeship without the approval of the Apprenticeship Board (see s26 Apprenticeship Act 1981; H.Ex 2.3; TIT p786-9).

Mr Peter Bridge

724. Evidence at the section 12 hearing was also given by Mr Bridge

. P-189

who claimed that some months after 24 August 1989 he had been spoken to by Mr Golds (H/T p1676) when they attended Technical College together in Newcastle. He claimed that Mr Golds had said that he was scared, and had been threatened by Det Sgt Thomas with being charged if he did not change his evidence or change his statement (H/T p1650).

725, As I have indicated in other contexts, Mr Bridge was available to give evidence at the trial of Roseanne Catt. The evidence of what he states Mr Golds had said to him, admissible as inconsistent with the evidence of Mr Golds at the trial of Roseanne Catt to the effect that he had not been threatened by any police officer, would not have implicated Mr Bridge in relation to the charges on which he was awaiting trial. I do not regard his evidence as fresh, no adequate reason having been suggested to me for Mr Bridge not having been called at trial.

The Section 12 Hearing: The Factual Issues

726. The major body of evidence relating to the rock incident was given by the Catt children Christopher, Sharon and Julie.

Each of them completely recanted and the versions they now give are consistent with that now given by Mr Golds. This is also consistent with what I take to be implicit in the jury's verdict that the previous versions they had given were at the instigation of Ms Catt, hence the submission of the Crown that in relation to this and other charges it's strong case has become "overwhelming".

* Conclusions as to Mr Shane Golds

727. The most important factual issue which arises for determination in relation to Counts 1 and 2 relates to what has emerged as

. P-190

by the Catt children which is in substantial conformity with the

later version of the rock incident given by Mr Golds.

731. Consistently with the approach which I have adopted, the fact that the version now given by the Catt children is essentially that reached by the jury, which necessarily involved a rejection beyond reasonable doubt of the pro Ms Catt versions previously given by the Catt children and on the basis that she had applied pressure to them, must weigh heavily in favour of the view that the Crown may rely on their evidence as to Counts 1 and 2, although from an otherwise unreliable source.

732. A similar set of conclusions may be reached as to the evidence of Mr Golds.

733. On the other hand, as to Mr Golds' evidence, regard must be had to the limited range of other evidence which the jury had for consideration. There was not before them, for example, the evidence relating to the BracamonteNan der Merwe matter, of Ms Nagy, Ms Hart, Ms Cheers and Mr Caesar. The jury could not evaluate within that context the possible influence of Det Sgt Thomas upon Mr Golds when he was taken from his place of employment to 27 Milligan Street on 23 August 1989 and then emerged having given a version diametrically opposed to that to which he had deposed in the private prosecution of Mr Catt at the Taree Local Court.

734. Regard must also be had to whether pressure Mr Golds claimed to have had exerted on him by Ms Catt as at 3 July 1989 could have had any affect by the time he gave that evidence in the Local Court. On his own version, Ms Catt had not up until then put him in fear by asking him, in effect, if he wanted money to kill Mr Catt. Nor could his employment have

. P-192

been in jeopardy since he had already left the employment of Mr Catt when he gave evidence at the Local Court.

735. Another important consideration is that when he did give evidence at the trial of Roseanne Catt, Mr Golds had not been relieved from the pressure of a belief that he might still be prosecuted for perjury either by being previously dealt with or no billed. Nor had he been given an immunity from prosecution or a "use" indemnity in respect of his evidence. According to his own evidence, he had been assured from a

number of authoritative prosecution sources that he might still be prosecuted before he entered the witness box (as to this, see authorities cited at paras. 657-658).

736. It might be said that even if improper pressure had been applied to Mr Golds, the harm was minimal since the ultimate version he gave is consistent with what is now an "overwhelming" case for the Crown. Achieving the "right" result, however, can scarcely be regarded as justifying seriously improper methods of investigation which might lead to untrue evidence (cf *Meissner v The Queen* (1995) 184 CLR 132; *R v Ireland* (1970) 126 CLR 321, 335).

737. Her Honour gave to the jury an "accomplice" warning as to Mr Golds' evidence and a warning as to his previous inconsistent version on oath (S/U p18-19). No ground of appeal was taken in 1993 as to the adequacy of these warnings (c/f *Davies and Cody v The King* (1936-37) 57 CLR p163-5).

738. There is of course no way of knowing whether the jury accepted Mr Golds' evidence and if so to what extent. In light, however, of the rejection of the Catt children's evidence as it then was, I take the view that it is likely that the jury did accept Mr Golds a

. P-193
a completely reliable witness.

739. Mr Golds should now be regarded as an unreliable witness on the basis of fresh evidence, together with other evidence which was already before the jury, relating to the lack of objectivity of Det Sgt Thomas and his propensity to use improper methods of investigation. This supports the conclusion, which I draw, that there is a reasonable possibility that if that fresh evidence had been before the jury, they may have declined to accept Mr Golds' evidence.

. P-194