

03/82

## SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

**R v RYAN**

Starke, Murphy and Marks JJ

29 October 1981

**STATUTORY INTERPRETATION – "MONEY OR OTHER VALUABLE THING" – WHETHER EXPRESSION HAS A WIDER MEANING THAN THE EXPRESSION "MONEY" – WHETHER IT IS CAPABLE OF INCLUDING THINGS OF VALUE IN THE PREPARATION, MANUFACTURE, SALE OF OR DEALING OR TRAFFICKING IN A DRUG OF ADDICTION – DIRECTION BY TRIAL JUDGE THAT THE EXPRESSION HAS A WIDER MEANING – NOSCITUR A SOCIIS – WHETHER JUDGE IN ERROR: POISONS ACT 1962, S32(4).**

**HELD:** Convictions quashed. The expression "other valuable thing" in s32(4) of the *Poisons Act 1962* is to be understood as restricted to the same sense as "money" encompassing merely any valuable thing used as or as representing money. Therefore, the Crown could have relied only on the possession by the applicant of money as a basis for invocation of the sub-section, the jury firstly having been satisfied beyond reasonable doubt that the possession of the money had the relevant connection in trafficking in heroin. The other articles, however, could be referred to to prove this question.

**STARKE, MURPHY and MARKS JJ:** ... It follows, in our view, that some restriction on the general sense of "other valuable thing" is inherent in s32(4) of the *Poisons Act 1962*. What are the limits, then, of such restriction? They cannot be identified without reference to the sub-section itself. The only points of arrival and departure are to be found in the expression "money" with which the words "other valuable thing" are connected.

This tends to support the conclusion that the expression "other valuable thing" in the sub-section connotes something used as, or as representing money, for example, a bar of gold or a diamond bracelet. This conclusion is supported by another consideration. Assume that the word money did not appear in the sub-section and the onus of proof is to be reversed where an accused is in possession merely of a "valuable thing" having the stated connection. Assume then a person is found in possession of a diamond bracelet and also articles of manufacture. It would seem then to be arguable whether the Crown could, without more, contend that the diamond bracelet being a "valuable thing" is capable of being regarded as "connected" with the stated activities or any one of them where its only connection could conceivably be as proceeds from or payment for some services or drugs. But if the matter is beyond argument in the context of the present case that a connection of that kind is encompassed, it is only because of the presence of the word "money" which makes it clear that the legislature intended the sub-section to apply to possession of the wherewithal for and the fruits of illegal marketing of drugs.

Thus, it is difficult to dissociate "other valuable thing" from "money" and likewise difficult to give it some different sense, the limits of which cannot be identified by recourse to any other words in the sub-section. This analysis is supported by and to some extent explains the reasoning behind the rule of statutory interpretation which holds that where words similar in nature are coupled together, although some may have several meanings, they are to be read in the same sense. The learned authors of *Maxwell on the Interpretation of Statutes*, 10th Edition, at page 332 state:-

"When two or more words which are susceptible of analogous meaning are coupled together '*noscitur a sociis*' they are understood to be used in their cognate sense. They take as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general."

To uphold the submissions of the Crown in this case it would be necessary to give to the admittedly ambiguous expression "other valuable thing" a meaning which widens the net of potential culpability of a person to whom s32(4) refers and augment the circumstances in which the traditional onus of proof is reversed. Speaking of this same legislation in the *R v Jed Elem*

[1982] VicRp 27; [1982] VR 295; 4 A Crim R 331 the Full Court said:

"The combination of ss28 and 32 can thus be seen to be Draconian legislation. They have been introduced into the *Poisons Act* in order to attempt to deal with a particularly dangerous type of offence and one which it is no doubt felt demands Draconian treatment. It behoves the Courts, however, to be astute to see that provisions of this kind are strictly construed and fairly applied. It is contrary to the traditional concepts of our criminal law that a person should upon his trial be required to answer a charge proved by deeming provisions such as are found in s28, but it is undoubtedly within the power of Parliament to reverse the onus of proof in criminal proceedings. That is the effect of s28. But the deeming provisions should be allowed no greater operation or effect than Parliament has expressed. The form of s32(5) differs from that of s28, but it has a similar effect." ...

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