01/05; [2005] VSC 59

SUPREME COURT OF VICTORIA

DPP v PASTRAS

Bongiorno J

1 February, 11 March 2005 — (2005) 11 VR 449; (2005) 152 A Crim R 234

CRIMINAL LAW – PROCEEDS OF CRIME – PERSON APPREHENDED AT HOME OF KNOWN DRUG DEALER WITH $44,000 IN CASH ON HIS PERSON – ELEMENTS OF OFFENCE – WHAT PROSECUTION IS REQUIRED TO PROVE – TEST TO BE APPLIED BY MAGISTRATE – WHETHER SUBJECTIVE SUSPICION OF POLICE INFORMANT RELEVANT – CHARGE DISMISSED BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR: *CONFISCATION ACT* 1997, S123; *SUMMARY OFFENCES ACT* 1966, S26; *CRIMES ACT* 1958, S195; *PROCEEDS OF CRIME ACT* 1987 (Cth), 82.

P. was apprehended at the home of a known drug dealer with $44,000 in cash on him. P. was charged with an offence under s123 of the *Confiscation Act* 1997 ('Act') in that P. was in possession of money which may be reasonably suspected to be the proceeds of crime. The magistrate held that there was no case to answer on the basis that there was no evidence of the subjective suspicion of the police informant that the money found on P. was the proceeds of crime. The magistrate dismissed the charge. Upon appeal—

HELD: Appeal upheld.

1. Whilst the magistrate followed a decision by Warren CJ in *DPP v Bodouloh*, there were other decisions of appellate courts in South Australia and New South Wales which dealt with a provision in a Federal Act virtually identical in effect to s123 of the Act. In those circumstances, the magistrate should have construed the provisions of s123 as that section was construed in the interstate cases.

2. It is for the tribunal of fact trying the charge under s123 of the Act to consider whether the property in question may be suspected of being the proceeds of crime. The police informant's suspicion is irrelevant.

***DPP v Bodouloh* (2003) 144 A Crim R 37; MC40/03, not followed.**

3. What the magistrate was required to do in considering the no case submission was to ask the question whether on the evidence as it stood at the end of the prosecution case there was evidence upon which P. could lawfully be convicted of being in possession of a sum of money which may be suspected of being proceeds of crime. This is a question of law. In the circumstances P. had a case to answer and it was not open to the magistrate to have found otherwise.

BONGIORNO J:

1. Section 123 of the *Confiscation Act* 1997[1] made it an offence for a person to receive, possess, conceal, dispose of or bring into Victoria any money or other property that may reasonably be suspected of being proceeds of crime. The same section provided for a penalty of 2 years' imprisonment or a level 7 fine or both.

2. Savas Pastras was charged with an offence under s123 of the *Confiscation Act* 1997 in respect of some $44,000 in cash found on his person when searched by police at the home of one Lewis Moran on 25 October 2002. The circumstances in which Pastras was apprehended may be summarised from the evidence eventually led before the Broadmeadows Magistrates' Court as follows.

3. On the day in question the appellant, Senior Detective Victor Anastasiadis, with other police, attended Moran's premises at 1/7 Washington Street, Essendon to execute a search warrant issued pursuant to the *Drugs, Poisons and Controlled Substances Act* 1981. When they arrived there Moran and one Virginia Strazdas were present. As the appellant was speaking to Strazdas he saw, through a window, the respondent Pastras walking towards the front door. He asked Strazdas who the person he saw was and she told him that it was a friend and that she would tell him to go away. She stood up and went straight to the door, ignoring an order from one of the other police officers not to do so. The appellant saw Strazdas open the door, put her head out and, whilst drawing the door back behind her so as to obscure the police view of Pastras, he heard Strazdas say in a hissed and loud tone "Go away".

4. Immediately after this event the appellant went to the door, opened it and recognised the person there as Pastras who was already known to him. He described the respondent's face as having a "shocked expression" and said that he started to shake. He directed Pastras to come into the house where he was searched. A package containing bundles of $100 and $50 notes to a total value of $44,000 were found on him. In the course of being searched the appellant described Pastras as being in a state of shock.

5. In due course Pastras was charged with the offence under s123 of the *Confiscation Act* 1997 and appeared before the Broadmeadows Court on 22 April 2004. He pleaded not guilty to the charge, which was dismissed by the Magistrate who found that he had no case to answer.

6. This appeal concerns the Magistrate's finding that Pastras had no case to answer in respect of the charge of being in possession of money which may be reasonably suspected to be the proceeds of crime; it being alleged on the appellant's behalf that there was evidence which ought to have required the respondent to make his defence to the charge.

7. A perusal of the transcript before the Magistrate reveals that the case was conducted before her on the basis that one of the elements of the offence was that one or other (or perhaps all) of the police officers involved had to be proven to have had a reasonable suspicion that the money found on Pastras when he was searched at Moran's premises were the proceeds of crime. The prosecution led no evidence going to the issue of suspicion other than that of the police officers concerned. This course is consistent with what I perceive to have been the view of the law held not only by the Magistrate but also by the prosecutor.

8. In his evidence-in-chief the appellant said that:

> "The money that was located on Mr Pastras I suspected as being the proceeds of crime and the proceeds of drug sales."

In cross-examination he conceded that his suspicion was that the money was to be used to pay Lewis Moran for drugs obtained on credit. He acceded to a proposition put to him by counsel for Pastras that for all that he knew the funds might be legitimate funds borrowed from a legitimate source and that his suspicion was that those funds were to be used for a drug transaction.

9. None of the other four police officers called gave any evidence in chief as to their suspicions with respect to this money but each of them, in cross-examination, conceded that they suspected that it was to be used for the purpose of paying for a drug transaction. With the exception of the evidence of the appellant to which I have referred none of them gave evidence as to any suspicion that the money was, itself, the proceeds of crime within the definition contained in the *Confiscation Act* 1997.

10. In her decision the Magistrate reviewed this evidence and concluded that each of the police officers had the reasonable suspicion that the money was to be used in connection with a drug deal between Pastras and Moran. She said that it was not reasonable to conclude that because the money was for the purpose of consummating a drug deal that it was itself derived or realised either directly or indirectly from the commission of a criminal offence as it had to be to fit the definition of the proceeds of crime as set out in the Act. She ruled that the respondent had no case to answer and dismissed the charge.

11. In dismissing the charge against the respondent the Magistrate applied a decision of this Court, *DPP v Bodouloh*[2] in which Warren CJ had considered the operation of s123 of the *Confiscation Act* 1997 and concluded that the test by which the question of reasonable suspicion for the purposes of the section had to be determined was a subjective test, in the sense that "... it must appear to the informant that reasonable grounds exist to support the suspicion and the belief". Her Honour went on to hold that, as in that case the Magistrate had excluded the evidence of the informant and other police as to their belief, he had rendered it impossible for him to make the necessary findings of fact as to suspicion. She thus upheld the prosecution appeal.

12. The Magistrate in this case considered herself bound by the decision in *Bodouloh*. It would appear that she reached this conclusion even though she was referred to decisions of intermediate appellate courts of other States dealing with s82 of the *Proceeds of Crime Act* 1987 (Cth), a provision

which is virtually identical in effect to s123 of the Victorian Act. In particular, she was referred to *R v Zotti*[3], a decision of the Court of Criminal Appeal of South Australia and *R v Buckett*[4], a decision of the Court of Criminal Appeal of New South Wales. Each of those cases concerning s82 of the federal Act would have required the application of a different test to determine the adequacy of the prosecution case. That they are relevant to the interpretation of s123 of the *Confiscation Act* 1997 follows as a logical corollary of the principle referred to by Young CJ in *R v Parsons*[5], to the effect that where any State court is concerned to construe a provision of a federal Act, that State court should defer to appellate courts of other States which have considered the federal statute where there is no binding authority of the local appellate court. The principle has been accepted by the High Court: *Australian Securities Commission v Marlborough Gold Mines Ltd*[6]. Accordingly, s123 of the State Act should be construed as being to the same effect as s82 of the federal Act; that is to say it should be construed as that section was construed in cases such as *Zotti* and *Buckett*. See also *McGee; ex parte McGee v McKeever*[7]. The Magistrate was not referred to *Parsons* or *Marlborough Gold* and, not surprisingly, took the course of holding herself bound by the decision of this Court to which I have referred.

13. In reaching the conclusion which she did in *Bodouloh*, Warren CJ considered the decision of Kellam J in *Rinaldi v Watts*[8] and decisions on s26 of the *Summary Offences Act* 1966 and its predecessors as being a source of jurisprudence applicable to the construction of s123 of the *Confiscation Act* 1997. Her Honour analysed a number of such authorities and concluded that they compelled the construction of s123 which she adopted. Neither she nor Kellam J were, unfortunately, referred to the New South Wales cases discussed hereunder or to *R v Zotti*[9], *R v Buckett*[10] or to the federal statute. The argument in both cases seems to have concentrated on s26 of the *Summary Offences Act* 1966 and its similarity to s123.

14. The offence commonly referred to in Victoria as "unlawful possession", now found in s26 of the *Summary Offences Act*, had its origin in a differently worded provision of an enactment passed in England in the second year of the reign of Queen Victoria. That statute was adopted in New South Wales in 1855 and became s1 of Act 19 Vict. No. 24. It appeared in this form:

> "Every person who shall be brought before any Justice of the Peace charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained and who shall not give an account to the satisfaction of such Justice how he came by the same shall be deemed guilty of a misdemeanour."

That section was re-enacted in substantially the same form as s27 of the *Police Offences Act* 1901 (NSW), whence it came to Victoria in 1907 as s10 of the *Police Offences Act* 1907 in the following form:

> "10 (1) Any person having in his possession or conveying in any manner any personal property whatsoever suspected of being stolen or unlawfully obtained may be apprehended either with or without warrant and brought before a Court of Petty Sessions.
>
> (2) If such person does not in the opinion of the Court give a satisfactory account as to how he came by the same he shall on conviction be liable to be imprisoned either with or without hard labour for any time not exceeding 12 months.
>
> (3) The said property if proved to be or to have been in the possession of the accused whether in a building or otherwise and whether the possession thereof had been parted with by the accused before being brought before the said Court or not shall for the purposes of this section be deemed to be in the possession of the said accused."

15. By the *Police Offences Act* 1912, s10 was amended by inserting the word "actual" before the word "possession" and by inserting a provision as to summoning the accused as an alternative to arresting him. See generally *Moors v Burke*[11].

16. The provision remained in the same form through subsequent consolidations of the Victorian Statutes but when it was re-enacted as s26 of the *Summary Offences Act* 1966 the word "reasonably" was inserted before the word "suspected" in subs (1). It has remained in that form since except for the addition of a further subsection which is of no interest for present purposes.

17. In New South Wales, s27 of the *Police Offences Act* 1901, which was the progenitor of s26

of our *Summary Offences Act*, was amended in 1908 to read as follows:

> "27. Whosoever being charged before a Justice with:-
> (a) having anything in his custody; or
>
> (b) knowingly having anything in the custody of another person; or
>
> (c) knowingly having anything in a house, building, lodging, apartment, field, or other place, whether belonging to or occupied by himself or not, or whether such thing is there had, or placed for his own use or the use of another, which thing may be reasonably suspected of being stolen or unlawfully obtained, does not give an account to the satisfaction of such Justice how he came by the same, shall be liable to a penalty not exceeding £10 or to imprisonment for a term not exceeding three months."

18. Section 27 was replaced in 1970 by s40 of the *Summary Offences Act* and was eventually subsumed into the *Crimes Act* 1900 (NSW) as s527C which is in the following terms:

> "527C (1) Any person who:
> (a) has any thing in his custody;
> (b) has any thing in the custody of another person;
> (c) has any thing in or on premises, whether belonging to or occupied by himself or not, or whether that thing is there for his own use or the use of another; or
> (d) gives custody or any thing to a person who is not lawfully entitled to possession of the thing, which thing may be reasonably suspected of being stolen or otherwise unlawfully obtained, shall be liable on conviction before a stipendiary magistrate to imprisonment for six months, or to a fine of $500.
>
> (2) It is a sufficient defence to a prosecution for an offence under subs (1) if the defendant satisfies the court that he had no reasonable grounds for suspecting that the thing referred to in the charge was stolen or otherwise unlawfully obtained.
>
> (3) In this section 'premises' includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built upon or not, and any part thereof."

The offence created by these enactments is commonly referred to in New South Wales as "goods in custody" or latterly "things in custody".

19. Since its enactment in Victoria, the provision which is now s26 of the *Summary Offences Act* has been construed as requiring the arresting officer to have the necessary suspicion (since 1966 the necessary reasonable suspicion) concerning the goods found in the accused's possession contemporaneously with their being in that possession. Thus Hodges J in *Brown v Schiffman*[12] expressed the situation thus:

> "In my opinion, to bring a person within this section the possession and suspicion must exist at the same point of time, and unless there is possession and suspicion at the same point of time (the arresting officer) would have no authority to bring (the accused) up before the Court under this section. I think that is manifestly the intention of the Legislature. It is a summary procedure dealing with persons who, so to speak, are caught red handed, caught, in the ordinary technical expression, *flagrante delicto*. Proceedings are thereupon taken with warrant or without warrant, not because (the accused) is in possession of property or because it is suspected that she was at some time or other in possession of stolen property, but because she is in possession of property suspected of being stolen."

As Hodges J points out, contemporaneity of suspicion and possession is required to justify the arrest by the arresting officer. Thus, it is an implied requirement of the section that it is the arresting officer who must have the necessary (reasonable) suspicion. If he did not, then his arrest would be unjustified and hence unlawful. See also *Tatchell v Lovett*[13], *McPherson v Goldstone*[14], *Olholm v Clink*[15] and *Moors v Burke*[16].

20. The situation described by Hodges J in *Brown v Schiffman* is still the case in Victoria when a charge of unlawful possession is before a Court. The notion of arrest (although now accompanied by the possibility of a summons) is still an inherent part of the procedure prescribed by s26 of the *Summary Offences Act*. Contemporaneity of actual possession and reasonable suspicion by the investigating police officer is still required to sustain a conviction.

21. It is otherwise in New South Wales. Although the original 1855 New South Wales Statute incorporated the concept of arrest in the section dealing with the possession of suspected goods, from 1908 onwards s27 of the *Police Offences Act*, which then incorporated the "goods in custody"

offence has been divorced completely from a different provision (s36) which authorised police constables to stop, search and detain persons who might be reasonably suspected of having or conveying anything stolen or unlawfully obtained. Section 27 has been, since 1908, an independent, offence creating section: *Ex parte Patmoy; Re Jack*[17]. In that case Jordan CJ traced the origins of the offence and reached the conclusion that by 1908 the offence created by s27 of the *Police Offences Act* 1901 had to be viewed according to its natural meaning, unencumbered by any concept of the necessity for the justification of an arrest. His Honour construed s27 as follows:

> "According to its natural meaning, read as a piece of English, it now deals with persons having in their custody, or knowingly having in the custody of another person, or in a house or other place, anything which may be reasonably suspected of being stolen or unlawfully obtained. It takes its stand at the point when such a person is charged before a magistrate with so having a thing with respect to which such suspicion may be reasonably entertained, and it provides that if he does not give an account, to the magistrate's satisfaction, of how he came by it, he shall be liable to a penalty. It follows, in my opinion, that what the section now requires is that, at the time when the charge is being heard for the purpose of being disposed of, it is for the magistrate to decide, in the first instance, on the evidence then placed before him, whether he is satisfied (beyond reasonable doubt, since it is a criminal charge) that it is then proper to entertain a reasonable suspicion that the thing was stolen or unlawfully obtained."

22. *Ex parte Patmoy; Re Jack* has been followed in many cases in New South Wales. In one such case, *R v English*[18] Gleeson CJ said:

> "It is now settled law in this State that when a Magistrate deals with a charge of goods in custody it is the duty of the Magistrate to decide whether he is satisfied, at the time of his decision, that it is then proper to entertain a reasonable suspicion that the goods were stolen or unlawfully obtained: *Ex parte Patmoy; Re Jack*; *Cleary v Hammond*[19] and *Abbrederis*[20]. The existence of such a suspicion is related in time to the proceedings before the Magistrate rather than the arrest or charging of the accused."

23. Section 123 of the *Confiscation Act* 1997 says nothing about the arrest or charging of a person accused of a breach of it. It leaves the procedure for bringing such person before a court to the provisions of the general law. Nor is it concerned solely with the question of possession, actual or otherwise. It prohibits the performance of a number of different acts in relation to the suggested proceeds of crime. There is nothing in the section which implies the necessity for any contemporaneity between the required suspicion and any of those acts. Indeed, it would be difficult, if not impossible, to apply a notion of contemporaneity between the required suspicion and some, at least, of the actions prohibited by the section. Finally, there would appear to be no warrant for incorporating into the section a requirement that the police informant (or any other investigating police officer) have the necessary reasonable suspicion. The police officer's suspicion is irrelevant. It is not an element of the offence. So much appears clear from the use of the modal verb "may" qualifying the past participle of the verb "suspect". It is for the tribunal of fact trying the charge to consider whether the property in question may be suspected of being the proceeds of crime. By contrast, s26 of the *Summary Offences Act* requires an actual reasonable suspicion by the person laying the charge.

24. The characteristics of s123 of the *Confiscation Act* 1997 resemble those of s527C of the *Crimes Act* 1900 (NSW) and are identical to those of s82 of the *Proceeds of Crime Act* 1987 (Cth). They do not resemble those of s26 of the *Summary Offences Act* 1966.

25. In order to make out the offence created by s123(1) of the *Confiscation Act* 1997 the prosecution must prove that the accused performed one of the acts prohibited by the section in respect of property which may reasonably be suspected of being the proceeds of crime. It is for the tribunal of fact, in this case a Magistrate, to be satisfied beyond reasonable doubt of each of the elements of the offence. Procedurally, the prosecutor would need to establish a *prima facie* case in the ordinary way before the accused could be required to enter upon his defence; which defences might include, in an appropriate case, reliance upon the statutory defence provided by s123(2).

26. Section 82 of the *Proceeds of Crime Act* 1987 (Cth) is, drafting differences aside, in virtually identical terms to s123 of the *Confiscation Act* 1997. The only material difference is that the word "Victoria" in the Victorian Act is replaced by the word "Australia" in the Commonwealth Act. That

section has been interpreted as requiring the tribunal of fact (usually a jury) to be satisfied as to each of the elements constituting the offence. In *R v Zotti*[21] the Court of Criminal Appeal of South Australia held that on the facts of that case the prosecution had to prove, first, that the appellant had disposed of money and secondly, that that money may reasonably be suspected of being the proceeds of crime. The Court relied upon the cases to which I have referred and *Anderson v Judges of District Court* (NSW)[22] and *R v Buckett*[23]. In each of those cases the Court made it clear that it was not the suspicion of the investigator that was relevant, but rather whether the tribunal of fact was satisfied that the relevant property may be suspected of being the proceeds of crime.

27. For the reasons which I have set out I respectfully differ from the view of s123 of the *Confiscation Act* 1997 of the Chief Justice as to the nature of the test of reasonable suspicion and of Kellam J in *Rinaldi v Watts*[24] as to the necessity for there to be contemporaneity between the possession of the relevant property and the reasonable suspicion that it may be the proceeds of crime. Thus the approach of the Magistrate in this case was wrong as a matter of law.

28. The Magistrate in this case dismissed the charge against the respondent by applying the reasoning in *Bodouloh* to the prosecution case. In particular, she held that there was no evidence of the subjective suspicion of the informant that the money found on Pastras was the proceeds of crime (as required by *Bodouloh*) and that, even if there was, there was no evidence that such a suspicion was reasonable. She held that the police officers in fact suspected that the money was to be used by Pastras to pay Lewis Moran for drugs and that that suspicion was reasonable. Thus, applying the law as laid down in *Bodouloh* the Magistrate reached the appropriate conclusion.

29. Had the Magistrate applied the law as I have expressed it she would have considered the no case submission by the respondent by asking the question whether on the evidence as it stood at the end of the prosecution case there was evidence upon which Pastras could lawfully be convicted of being in possession of a sum of money which may be suspected of being proceeds of crime.[25] This is a question of law.

30. There is no question that there was ample evidence of Pastras' possession of the sum of money. A number of police officers deposed to that fact.

31. The question of whether there was evidence upon which a tribunal of fact could find that the money may be suspected of being the proceeds of crime depends upon inferences being drawn from the evidence before the Court. There was evidence that Pastras was in possession of a large sum of money, that it was secreted on his body, that he had been unemployed for a year or so and was in receipt of sickness benefits, that he had no other assets, had not recently sold anything and that he was at the home of a known drug dealer who, on some occasions at least, did business on credit. Might not those facts lead one to a conclusion that the money may be suspected as being the proceeds of crime? That there might be other hypotheses consistent with its not being such proceeds is not to the point: *R v Tween*[26]. Giving full weight to the qualifier "may" and the fact that a suspicion is a state of conjecture or surmise when proof is lacking[27] I consider the evidence would support a finding that the money may be suspected of being the proceeds of crime. Of course, the suspicion must be reasonable; that is to say not capricious or lacking some logical basis. It may reasonably be suspected here that Pastras had bought drugs from Moran on an earlier occasion on credit, had sold them and was about to pay his debt with the proceeds of such sales or part of such proceeds. There would be nothing unreasonable about such a conclusion and it is certainly not precluded by the probability that Pastras was going to use the money to pay Moran for drugs. That proceeds of crime would themselves become proceeds of crime a second time in such a scenario is not to the point.

32. The level of proof the prosecution must maintain to establish a *prima facie* case of a breach of s123 of the *Confiscation Act* 1997 is a much qualified one. It has been met in this case. The respondent has a case to answer. Whether he will be convicted will depend upon whether the Magistrate is satisfied beyond reasonable doubt of each of the elements of the offence after the respondent has made his defence to the charge whether by relying on s123(2) or otherwise. It was not open to the Magistrate applying the law as I have found it to be to the evidence led before her to find that Pastras had no case to answer. Accordingly, the appeal will be upheld and the matter remitted to the Magistrate to be further dealt with according to law.

[1] Part 14 of the *Confiscation Act* 1997 which contained s123 has now been repealed by the *Crimes (Money Laundering) Act* 2003. The repealing Act enacted s195 of the *Crimes Act* 1958 which, although differently drafted, would appear to create a similar, if perhaps wider, offence to s123 of the *Confiscation Act* 1997.
[2] [2003] VSC 501; (2003) 144 A Crim R 37.
[3] [2002] SASC 164; (2002) 82 SASR 554; 131 A Crim R 27.
[4] 126 FLR 435; (1995) 132 ALR 669; 79 A Crim R 302.
[5] [1983] VicRp 109; (1983) 2 VR 499 at 506; (1983) 53 ALR 568; (1983) 71 FLR 416 quoting Street CJ in *R v Abbrederis* (1981) 1 NSWLR 530 at 542; 51 FLR 99; (1981) 36 ALR 109; (1981) 3 A Crim R 366.
[6] [1993] HCA 15; (1993) 177 CLR 485 at 492; (1993) 112 ALR 627; (1993) 10 ACSR 230; (1993) 67 ALJR 517.
[7] [1995] 1 Qd R 623; (1994) 71 A Crim R 586.
[8] [2003] VSC 2; (2003) 138 A Crim R 456.
[9] [2002] SASC 164; (2002) 82 SASR 554; 131 A Crim R 27.
[10] 126 FLR 435; (1995) 132 ALR 669; 79 A Crim R 302.
[11] [1919] HCA 32; (1919) 26 CLR 265; 25 ALR 213.
[12] [1911] VicLawRp 28; [1911] VLR 133 at 135; 16 ALR 633.
[13] [1908] VicLawRp 91; [1908] VLR 645; 14 ALR 540; 30 ALT 88.
[14] [1920] VicLawRp 66; [1920] VLR 331.
[15] [1923] VicLawRp 69; [1923] VLR 556; 28 ALR 421; 44 ALT 87 per McArthur J.
[16] [1919] HCA 32; (1919) 26 CLR 265; 25 ALR 213.
[17] (1944) 44 SR (NSW) 351; 61 WN (NSW) 228.
[18] (1989) 17 NSWLR 149; 44 A Crim R 273.
[19] [1976] 1 NSWLR 111.
[20] [1981] 1 NSWLR 530; 51 FLR 99; (1981) 36 ALR 109; (1981) 3 A Crim R 366.
[21] [2002] SASC 164; (2002) 82 SASR 554; 131 A Crim R 27.
[22] (1992) 27 NSWLR 701 at 714 per Kirby P; 62 A Crim R 277.
[23] 126 FLR 435; (1995) 132 ALR 669; 79 A Crim R 302.
[24] [2003] VSC 2; (2003) 138 A Crim R 456.
[25] *May v O'Sullivan* [1955] HCA 38; (1955) 92 CLR 654; [1955] ALR 671.
[26] [1965] VicRp 89; [1965] VR 687 per Sholl J at 693.
[27] *George v Rockett* [1990] HCA 26; (1990) 170 CLR 104 at 115; 93 ALR 483; 64 ALJR 384; 48 A Crim R 246.

APPEARANCES: For the Appellant DPP: Mr D Gurvich, counsel. Solicitor for Public Prosecutions. For the Respondent Pastras: Mr S Shirreffs SC, counsel. Stephen Andrianakis & Associates, solicitors.
