



HIGH COURT OF AUSTRALIA

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Details of Filing

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IN THE HIGH COURT OF AUSTRALIA
HOBART REGISTRY

BETWEEN:

CHAUNCEY AARON BELL

Appellant

and

STATE OF TASMANIA

Respondent

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OUTLINE OF ORAL ARGUMENT
ATTORNEY-GENERAL FOR THE STATE OF TASMANIA (INTERVENING)

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Part 2: Submissions

- 20 2. Schedule 1 to the *Criminal Code Act 1924* (Tas) ('the Code') states the fundamental principles of criminal responsibility. In particular, it supplants the common law doctrine of *mens rea*.¹
3. Sub-section 13(1) is exculpatory in that, if the accused did not act voluntarily and intentionally, and the result was not a chance event the accused, will not be criminally responsible. The accused does not rely on either limb of s 13(1) in this case.
4. The voluntary and intentional act required in s 14 of the *Misuse of Drugs Act 2001* (Tas) ('the MDA') is the supply (that is, the act of administering) a controlled drug, which is
30 identical to the supply that constitutes the offence under s 26. Section 14 is constituted a 'crime' under the Code, s 4(1), and the principles of criminal responsibility apply to s 26 by virtue of the *Acts Interpretation Act 1931* (Tas), s 36.

¹ *R v Vallance* (1968) 108 CLR 56, 60 (Dixon CJ), 78 (Windeyer J); *Arnol v R* (1981) Tas R 157, 168 (Neasey J) *Snow v R* (1962) Tas R 271, 275 (Burbury CJ & Cox J) **JBA pt D vol 7, 1694**; *Bennett v R* (1991) Tas R 11, 17 (Green CJ, Crawford and Cox JJ agreeing) **JBA pt D vol 6, 1334**.

5. The criminal responsibility for the offences is different because of the circumstance in which the drug is administered. In s 14 the circumstance is administering a drug to a child.² Greater criminal responsibility attaches under s 14 because of the legislative policy of protecting children from the social evils associated with illicit drugs.³
6. Where there is voluntary and intentional conduct that amounts to a contravention of either s 14 or s 26 of the MDA, the actor enters upon a threshold in which the general principles relating to criminal responsibility in the Code apply, depending on the circumstances of the case, including the:
 - 10 • exculpatory operation of the second limb of s 13(1), for an unintended, unforeseen and unforeseeable event;
 - inculpatory operation of s 13(3), for an unforeseen result; and
 - exculpatory operation of the defence of honest and reasonable mistake of fact, identified in s 14.
7. Section 13(3) of the Code takes its place in Chapter IV of the Code in a case where the accused's criminal conduct produces a result that the accused does not foresee.⁴ Its effect is to expose a person who does an act (or omission) accompanied by an intention to commit an offence to criminal responsibility (potentially more serious) for an unforeseen (but not unforeseeable result). The result of the intention to commit the offence is to change the person's normative position from innocent to culpable conduct.
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8. An honest and reasonable, but mistaken, belief, however, maintains the accused's normative position. To be successful, the defence of honest and reasonable mistake of fact, which is assumed in s 14, must render the accused's act innocent.⁵ The word 'innocent' means not guilty of a criminal offence.⁶
9. In the result, once the accused committed the act of administering the controlled drug, his normative position changed. He was then criminally responsible for the result (administering the drug to the child).
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10. But, in any event, by contending that he believed in a state of affairs in which his unlawful act resulted (unbeknownst to him) in the administration of the drug to a child, the accused places himself squarely within s 13(3).

² Cf *Vallance v R* (1961) 108 CLR 56, 64 (Kitto J) **JBA pt D vol 7, 1620**.

³ Cf *Kapronowski v R* (1973) 133 CLR 209, 231 (Gibbs J) **JBA pt C vol 3, 440**.

⁴ *Vallance v R* (1961) 108 CLR 56, 80 (Windeyer J) **JBA pt D vol 7, 1636**.

⁵ *He Kaw Teh v R* (1985) 157 CLR 527, 533 (Gibbs CJ) 582 (Brennan J) 590 (Dawson J) **JBA pt C vol 3, 346, 395, 403**; *Bergin v Stack* (1953) 88 CLR 248, 254 (Webb J dissenting) 262 (Fullagar J) **JBA pt C vol 3, 233, 241**; *CTM v R* (2008) 236 CLR 440, 447 (Gleeson CJ, Gummow, Crennan & Keifel JJ) **JBA pt C vol 3, 273**.

⁶ *CTM v R* (2008) 236 CLR 440, 447 (Gleeson CJ, Gummow, Crennan & Keifel JJ) **JBA pt C vol 3, 273**.

11. There is no occasion to overrule *Bergin v Stack*⁷, or *CTM v R*⁸. The Attorney-General relies on her written submissions, pp 8-9 [20]-[22].

Dated: 5 October 2021

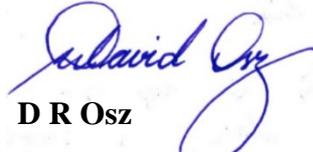


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⁷ (1953) 88 CLR 248.

⁸ (2008) 236 CLR 440.