



COURT OF APPEAL

UNAPPROVED

NO REDACTION NEEDED

Record No.: 115/18

Birmingham P.
Kennedy J.
Donnelly J.

NEUTRAL CITATION NO:
[2021 IECA 86]

BETWEEN/

THE PEOPLE (AT THE SUIT OF THE
DIRECTOR OF PUBLIC PROSECUTIONS)

RESPONDENT

-and-

STEPHEN GLYNN

APPELLANT

JUDGMENT of the Court delivered by Ms. Justice Donnelly on the 25th day of March 2021

1. This appeal raises the interpretation of “market value” in assessing whether the controlled drug at issue exceeds €13,000 as provided for in s.15A(1)(b) of the Misuse of Drugs Act 1977 as amended (hereinafter, “the Misuse of Drugs Act”). The appellant was convicted of the offence of possession of a controlled drug for the purpose of sale or supply when, at the time the drug was in his possession, the market value of the controlled drug amounted to €13,000 or more, contrary to s.15A of the Misuse of Drugs Act. The only issue at the trial was whether the market value of the controlled drug had reached the threshold of €13,000 as the appellant had earlier pleaded guilty to possession of the controlled drug for the purpose of sale or supply, contrary to s.15 of the Misuse of Drugs Act. The two offences arose out of the same

facts wherein the appellant was found with ten packages containing the controlled drug diamorphine (heroin) concealed in his car pursuant to a search carried out by the gardaí on routine patrol.

2. The packages in the possession of the appellant were analysed in the Forensic Science Laboratory. They had a total weight of 245.431 grams and were in powdered form containing the controlled drug of diamorphine. It was elicited in evidence that the drug had a value of just under €10,000 in the market between dealers, but if broken down into individual street deals, the value was €34,360. It was that latter value that the prosecution relied upon as the market value in accordance with the Misuse of Drugs Act.

3. The appellant was sentenced on 12 March 2018 to 10 years' imprisonment for the s.15A offence, having had a previous conviction from 2008 for a s.15A offence and where s.27(3F) of the Act requires a minimum sentence of 10 years' to be imposed where an accused has been convicted more than once for this offence. The conviction is subject to review after five years pursuant to s.27(3J) and (3K) of the Act of 1977. It was accepted by the prosecution garda that the appellant was only handling the drug and did so for €200. He was at the low end of the chain and was co-operative on arrest, making full admissions.

Issue Raised at Trial: The Definition of Market Value in the Act of 1977

The evidence

4. Evidence was given by Detective Sergeant Roberts, whose role at the Garda National Drugs and Organised Crime Bureau is to monitor drug prices and who holds the responsibility for issuing accurate guidelines relating to market value of controlled drugs throughout the country. He gave evidence as to how the market value of a controlled drug is calculated. It can be noted at this juncture that this is a crucial role in so far as a s.15A conviction is dependent on the market value of the controlled drugs, amounting to €13,000 or more.

5. In his evidence, he stated that the valuation of the drugs is based on the lowest denominational street deal. He provided a useful example of this in his cross-examination, below: -

“A. [...] So, for example, with heroin .1 of a gram is the lowest denominational deal. If we were talking about cocaine, the lowest denominational deal is a gram of cocaine which is a value of €70 for example. If we’re talking about ecstasy we’d value it on the price of one MDMA tablet. So, with heroin, yes, it's .1 of a gram because that’s what the traditional score bag, as it’s known in the street, weighs and sells for us. That’s the lowest deal. So, I accept your point, yes, it’s based on the lowest denominational street deal and the more that people buy, for example, people who are involved in mid-level drug dealing that would be purchasing an ounce of heroin or people [who] would be buying a kilo of heroin, the price of that gram will come down and come down like in any market, the more you buy, the cheaper it becomes. So, I can expand on that in a sense that an ounce of heroin for example, which is a weight of 28 grams, will cost, during 2015, €1,300. If we go to a kilo of heroin which is a 1000 grams, the price will be €30,000 for that kilo. So, you can see the prices coming down from 140 per gram, down to 60 and indeed down to 30 and this continues, you know, and it’s the same with every type of drug that exists; the more you buy, the cheaper it becomes.

Q. Yes, so we have these different markets and in one of the textbooks on drug offences it talks about a wholesale and a retail market even?

A. That’s correct.

Q. Yet you confine your valuation to the street level, that’s the highest price it could get?

A. What I try to do, is just to demonstrate or illustrate to the Court, that if somebody had the amount of -- a kilo of heroin for example, that if that was broken down into

street deals, that potentially this is what it could achieve. And I try to do this as fairly as possible because this is how the illicit drug market actually works.

Q. But you don't value the drugs at the market price between dealers, you value it on the basis of the street sale?

A. Yes, I do. But I'm also very happy to concede and illustrate to the Court that this wholesale end of the market does exist. So, there's a balance there to explain how the illicit market works with pricing.

Q. Because in this case, the market, the relevant market, would not have been the street level sale?

A. Well, when a suspect is found in possession of an amount of drugs, in this case approximately a quarter of a kilo, what we have to consider is where is this drug going to end up and what effective profits can be made from it. So, it is very real and accurate to actually base the price on what the lowest denominational street deal is."

6. When giving evidence about the specific drug which was in the possession of the appellant, Detective Sergeant Roberts stated:-

“Q. Well in this case, the certificate says it was 245 grams, that's just under a quarter of a kilo?

A. That's correct.

Q. So, that's less than €10,000?

A. In the wholesale market, yes.

Q. In the wholesale market. And that would -- we know that section 15A is €13,000 or more?

A. Yes, but as I stated when that's broken into street deals it would achieve €34,360.”

7. Sergeant Fleming also gave evidence confirming that he too valued drugs on a street, individual level, rather than in the market in which the quantity seized was being supplied.

The application for a directed verdict

8. At the close of the prosecution case, counsel for the appellant sought to have the case dismissed on three grounds, the one of concern for this appeal was that of the correct market value of the drug. This was contested by the DPP and the trial judge dismissed the appellant's application, relying on *(The People) DPP v. Heaphy* [2010] IECCA 86 in doing so. The findings in *The People (DPP) v. Heaphy* will be considered below. In his charge to the jury, the trial judge stated that the jury "should look in arriving at the market value at retail or street value of such drugs" and "as I say, as a matter of law, I tell you that it has been determined that when arriving at a valuation, you look to the street value and you have heard the evidence in relation to that."

The Ground of Appeal

9. A single ground of appeal is being pursued by the appellant:-

- (i) that the trial judge erred in law in failing to hold that the prosecution evidence was such that the "market value" of the drugs in issue did not exceed €13,000, and/or erred in law in allowing the issue of the value of the drugs to go to the jury for determination.

The Submissions of the Parties

The appellant's submissions

The prosecution's interpretation of "Market Value" is erroneous

10. The appellant summarised the evidence of Detective Sergeant Roberts when giving evidence on the market value of the drugs found in the appellant's possession: there are several markets in the sale and supply of illegal drugs depending on where in the chain of supply the sale or supply is occurring based on the quantity involved; that the appellant was involved in a

market between dealers; that the quantity of drugs in the appellant's possession had a value of just under €10,000 in that market, but if broken down into individual street deals, its value was €34,360.

11. The appellant submits that s.15A refers to the market value "*at any time while the drug or drugs are in the person's possession*" and therefore, the market value of the drugs for the purposes of the appellant, should be calculated as being to the value of €10,000 rather than €34,360. This is due to the fact that the drugs were being transported by the appellant in a market between dealers and that was their value in that market *at the time* they were in his possession. They say that this was accepted by Detective Sergeant Roberts. The appellant submits that on this basis, the s.15A conviction should not stand as there is nothing in the Act of 1977 to imply that the market value should be broken down into the smallest possible individual street deals.

12. The appellant submits that what is at issue in the case is a net point of statutory interpretation properly based on the very particular evidence in this case. The appellant submits that the wording "*at any time while the drug or drugs are in the person's possession*", are words which must be given their full meaning. The Oireachtas is presumed not to have used words in a statute without a reason or meaning. The appellant also draws attention to the definition of "market value" in s.15A(5) which provides that "market value", in relation to a controlled drug, means the price that drug could be expected to fetch on the market for the unlawful sale or supply of controlled drugs." There is no definition in the Act of 1977 for "market". The appellant submits that if the Oireachtas had meant that the value should be assessed by reference to "street value", it could or should have used the phrases "street value", "individual sale price" or "optimum value", but it does not. The appellant submits that this is decisive and in favour of the appellant. The appellant argues that the prosecution has conceded that there are several markets in the sale and supply of drugs and that the market the appellant was placed

in was the market between dealers. Therefore, according to the appellant, the market value attributed to the drugs in the possession of the appellant being €34,360, was erroneous.

13. The appellant submits that the distinction between different markets that is argued in this case is irrelevant to the vast majority of cases that come before the courts. It will only have material effect, such as in the appellant's case, where the bulk valuation falls below €13,000, but the street valuation comes over that figure.

14. The appellant turns to various dictionary definitions of "market value" as being "[s]ale as controlled by supply and demand; hence demand (for a commodity)."; "[t]he rate of purchase and sale; price in the market, market value."; and "current value in the market, saleable value." While the appellant concedes that the definitions add little, he submits they can certainly capture the interpretation of s.15A as advanced by him.

The principle against doubtful penalisation should apply

15. The appellant submits that the principle against doubtful penalisation should apply in this case and relies on O'Higgins C.J. in *Mullins v. Harnett* [1998] 4 IR 426 to that effect, para.6 :-

“According to Maxwell, 12th ed. pp. 239 to 240 “The strict construction of a penal statute seems to manifest itself in four ways: in the requirement of express language for the creation of an offence; in interpreting strictly the words setting out elements of an offence; in requiring the fulfilment of the letter of the statutory conditions precedent to the infliction of punishment; and in insisting on a strict observance of technical provisions concerning criminal procedure and jurisdiction”. It would appear that the principle applies not only to criminal offences but to any form of detriment. At p.572 of *Bennion* the nature of the principle is stated thus:

“Whenever it can be argued that an enactment has a meaning requiring infliction of a detriment of any kind, the principle against doubtful penalisation comes into play.

If the detriment is minor, the principle will carry little weight. If the detriment is severe, the principle will be correspondingly powerful. As Staughton L.J. said in relation to penalisation through retrospectivity, it is ‘a matter of degree - the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended’. However it operates, the principle requires that persons should not be subjected by law to any sort of detriment unless this is imposed by clear words.”

16. The appellant argues that the detriment suffered by the appellant is extreme due to the mandatory minimum sentence of 10 years’ imprisonment imposed. It is submitted by the appellant that corresponding to this gravity, the statutory criteria requiring this penalty must be express and interpreted strictly. The appellant also relies on *Mullins v. Harnett* wherein the court held at para 7 that: -

“...in construing penal (not only criminal) statutes the same principles apply as to other statutes, but additional criteria have been taken into account also. Having applied “all the canons of interpretation” the matter does not appear to me to be ambiguous (in the sense that, being a penal section, it would be resolved in a manner most favourable to the citizen).”

Therefore, the appellant submits, the question of the appropriate market value should be resolved in a manner most favourable to him.

The People (DPP) v. Heaphy

17. The appellant acknowledges that there is in existence a decision of the Court of Criminal Appeal which is contrary to his argument. In a judgment delivered by O’Donnell J. the Court of Criminal Appeal in *The People (DPP) v. Heaphy* stated at para 9: -

“In relation to the question of the definition of market value it appears to the Court that this on its face is a matter to which an ordinary interpretation should be given and that, given the fact that the evil of sale and supply of drugs is in relation to their sale

and supply to members of the public, it does not appear to the Court that there is any other possible interpretation other than that this is the retail or street value which is being referred to in the section and in that regard the Court notes that in the *Finnamore* case the same approach was taken and the same assumption was clearly operating in the court at that time.”

18. The appellant submits that *The People (DPP) v. Heaphy* should not be followed in this case for three reasons. The first being that it was delivered *ex tempore* and the principles in *Mullins v. Harnett* do not appear to have been opened to the court, nor does the question of the interpretation of the phrase “market value” in s.15A appear to have been fully argued.

19. Secondly, the appellant submits that as a consequence of that, the judgment is limited. If the phrase, used by O’Donnell J. in *The People (DPP) v. Heaphy*, as being “*ordinary interpretation*” means that the plain and ordinary meaning of the statutory words should be applied, then the appellant submits that on the evidence in his case, the plain and ordinary meaning is the market in which the total quantity of drugs is valued. This is particularly so where s.15A states the valuation is “while the drug or drugs are in the person’s possession.”

20. Thirdly, the prosecution evidence in the present case is fully supportive of the distinction in the markets upon which the appellant’s case is based. This is contrary to the case in *The People (DPP) v. Heaphy* wherein the court refers to the applicant’s own evidence not supporting his case.

21. The appellant acknowledged that the *Heaphy* decision was from a court of co-ordinate jurisdiction. He referred to the recent Supreme Court decision of *A v. Minister for Justice and Equality* [2020] IESC 70 in which the Supreme Court endorsed the observations of Clarke J. as he then was, in *Re Worldport Ireland Limited (In Liquidation)* [2005] IEHC 189. At para 63 Dunne J. stated:

“It is important to emphasise that the reasons for the approach outlined in those cases is in part due to judicial comity as mentioned by Clarke J. but also the requirement of certainty in the law. Different decisions on the same issue by different members of the same court can only give rise to a situation where judges and practitioners alike would be unable to say with clarity what the state of the law is in any given area. Apart from the obvious uncertainty posed by a situation where judges were free to come to a view on a particular issue without regard to the view expressed previously by a colleague, as Clarke J. noted, the lack of certainty could give rise to increased litigation as parties and practitioners struggled to ascertain the legal status of a particular legal principle or the correct interpretation of a piece of legislation. It is for that reason that a judge of the same jurisdiction should have regard to a decision of a colleague on the same issue and should as a general rule follow that decision unless there is a clear basis for departing from that decision. As Clarke J. pointed out, it is only where there are substantial reasons for believing that the initial judgment was wrong that one should depart from it. It is not necessary to reiterate the types of situation in which that might occur as those have been described by Clarke J. in *Worldport*.”

The respondent’s submissions

22. Counsel for the respondent submits that there are a limited number of cases relevant to the issue. The respondent relies on the earlier decision in *The People (DPP) v. Balogun* [2006] IECCA 119 which considered an argument that the valuation of the relevant drugs was not established as there was a question of purity. Rejecting this submission, the Court held at para 6: -

“We are talking of a section that is value based not weight based and value is what a willing vendor would take and a willing buyer would buy. It is like any other article being sold or bought. Under the Act, an experienced garda in the Drug Squad is

entitled to give evidence of value and he gave evidence of value in this case. He was cross-examined on these very points...The trial judge rightly or wrongly allowed these points go to the jury. There was an added advantage the accused had in this case that the jury had to consider the validity of this point as to whether the garda was talking nonsense or whether they could accept or not accept his evidence that the issue of purity did not arise in the ordinary way of buying and selling of the drugs....The evidence of the garda is there. He was heavily cross-examined on this point. It went to the jury and the jury were entitled to find, in the view of the court, that the applicant was guilty of the offence under section 15A and were entitled to accept the valuation evidence of the garda.”

23. The respondent also relies on *The People (DPP) v. Finnamore* [2009] 1 I.R. 153 where it was argued that an incorrect valuation of drugs had been given to the trial court. The evidence showed that the powdered substance had not been analysed to determine the overall percentage of the controlled drug within the powder. The court ultimately held that the valuation was of the drugs in the condition in which they existed at the time they were in the possession of the accused.

24. Counsel for the respondent relied primarily on *The People (DPP) v. Heaphy* which he said was a more direct challenge to the interpretation of “market value” in the context of s.15A of the Misuse of Drugs Act. He relied upon the paragraph set out above. He submitted that the trial judge’s ruling was consistent with these decisions and that the trial judge was bound by them.

25. Counsel for the respondent referred to the expertise of the garda who gave evidence in this case. He was entitled to give the evidence he gave pursuant to s.15A(3) of the Misuse of Drugs Act. The purpose of section 15A (3) of the Misuse of Drugs Act was to give a statutory

basis to the type of evidence the garda gave in this case. Counsel referred to the methodology used by the garda in assessing the market value of the controlled drug.

26. Counsel referred to the wording of s.15A(1)(b) which makes reference to the “drug” in the person’s possession and the market value of the “controlled drug”. This reference to “controlled drug” was also found in s.15A(3) concerning the entitlement of an expert garda or customs and excise witness to give evidence and also in s.15(A)(5) concerning the definition of the “market value”. This demonstrated that the market value was to be assessed in a more generic way and stands independently to the reference to the drugs in the person’s possession.

Discussion and Decision

27. It is helpful to set out the provisions of s.15A which provides:

“15A. — (1) A person shall be guilty of an offence under this section where —

(a) the person has in his possession, whether lawfully or not, one or more controlled drugs for the purpose of selling or otherwise supplying the drug or drugs to another in contravention of regulations under *section 5* of this Act, and

(b) at any time while the drug or drugs are in the person's possession the market value of the controlled drug or the aggregate of the market values of the controlled drugs, as the case may be, amounts to €13,000 or more.

(2) Subject to *section 29(3)* of this Act (as amended by section 6 of the Criminal Justice Act 1999) in any proceedings for an offence under this section, where —

(a) it is proved that a person was in possession of a controlled drug, and

(b) the court, having regard to the quantity of the controlled drug which the person possessed or to such other matters that the court considers relevant, is satisfied that

it is reasonable to assume that the controlled drug was not intended for his immediate personal use,

he shall be presumed, until the court is satisfied to the contrary, to have been in possession of the controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under *section 5* of this Act.

(3) If the court is satisfied that a member of the Garda Síochána or an officer of customs and excise has knowledge of the unlawful sale or supply of controlled drugs, that member or officer, as the case may be, shall be entitled in any proceedings for an offence under this section to be heard and to give evidence as to —

(a) the market value of the controlled drug concerned, or

(b) the aggregate of the market values of the controlled drugs concerned.

(3A) In any proceedings for an offence under this section, it shall not be necessary for the prosecutor to prove that a person knew that at any time while the controlled drug or drugs concerned were in the person's possession that the market value of that drug or the aggregate of the market values of those drugs, as the case may be, amounted to €13,000 or more or that he or she was reckless in that regard.

(4) No proceedings may be instituted under this section except by or with the consent of the Director of Public Prosecutions.

(5) In this section —

'market value', in relation to a controlled drug, means the price that drug could be expected to fetch on the market for the unlawful sale or supply of controlled drugs;

‘ an officer of customs and excise’ has the same meaning as in section 6 of the Criminal Justice (Drug Trafficking) Act, 1996.”

28. We consider that an important starting point is the decision in *The People (DPP) v. Heaphy*. This was an *ex tempore* decision. *Ex tempore* decisions are by their nature decisions given more quickly than a reserved decision and in general there is less deliberation given to the judgment. That does not mean that the decision is ill-considered or not authoritative. Indeed, we note that in *O’Brien v. Mirror Group Newspapers Ltd.* [2001] 1 I.R. 1, Geoghegan J. referred to an *ex tempore* ruling of the Supreme Court with approval but said that as the transcript remained unapproved it would not be appropriate to cite passages from it. The present decision is approved and thus it is appropriate to quote from it.

29. We note that *The People (DPP) v. Heaphy* was a decision of an appellate court consisting of three judges, thus lending the weight of three judicial minds to the point at issue. It is also a decision which is clear and unequivocal in its terms. The court held that on its face it was a matter to which an ordinary interpretation should be given to the meaning of market value and on that basis, it did not appear to the court that there was any other possible interpretation other than that this is the retail or street value which is being referred to in the section.

30. Faced with that decision, the trial judge can hardly be faulted for following such a clear interpretation of “market value” as found by the Court of Criminal Appeal. This Court is in a different position being a court of concomitant jurisdiction. This Court must examine in greater detail if *The People (DPP) v. Heaphy* decision should be followed. At the outset that judgment notes that in truth the only issue between the parties was whether the value of the controlled drugs was over €13,000, therefore bringing it within s.15A. Indeed, in *The People (DPP) v. Heaphy* part of the evidence was that the accused said that he sold the MDMA tablets for €2 in amounts of 200 and “the lads then sell them for €5”. Thus, that accused was saying he would

get under €13,000 for the tablets but on the street the total would sell for over €13,000. The court viewed that as evidence from the accused that the tablets had a market value of over the threshold for a s.15A offence. The court made a remark that this was a case where at best the proviso might apply even if they found in his favour on any one point.

31. We take from the foregoing that the Court of Criminal Appeal may have been viewing the case as one in which the proviso might apply. The court went on to point out that one of the issues was whether the gardaí could rely upon a “circular” which set out valuations and the court did not endorse any practice of simply proffering the circular as if it was a piece of self-standing evidence. The court then dealt with the issue of the quality of the expert evidence required and then the court turned to the market value point. Counsel for the appellant is correct that the extent of the arguments on the “market value” issue is not set out.

32. We therefore conclude that *The People (DPP) v. Heaphy* decision of the Court of Criminal Appeal is not a decision to which the same high degree of deference, as set out in the authoritative cases *A v. Minister for Justice and Equality* and *Worldport Ireland Limited (In Liquidation)*, must be granted by this Court as a court of concomitant jurisdiction. Nonetheless, some deference must be shown to such a definitive statement by an appellate court that a piece of legislation was clear on its face. While substantial reasons may not be required to demonstrate that the decision was wrong, we would have to be satisfied that on balance the decision was wrong before we would intervene. In effect, we consider that the appellant must bear the burden of establishing that his interpretation is the correct one before we would intervene to overturn the *ex tempore* decision.

33. The appellant placed considerable emphasis on the phrase in s.15A(1)(b) “at any time while the drug or drugs are in the person’s possession” to lend force to his argument that the market value referred to the market in which the appellant operated. In our view this does not follow. The reference to “at any time” relates to the time frame in which market value must be

assessed but does not relate to the actual market. The legislature had to fix a time period in which the value was to be assessed. At the most extreme, the Oireachtas could have set the time as being the date of charge, the date of trial, the month or the year in which the possession took place (although we recognise that there may have been challenges to the legislation if some or even all of these choices had been made). Instead, the Oireachtas related it to the time period in which the accused possessed it. The Oireachtas did not leave it open to an accused person to argue that if the value changed during the period in which he or she possessed the drug, he or she should get the benefit of a lower value. Instead, if the value is over €13,000 *at any time* when it is in the accused's possession, the accused will have committed an offence under s.15A of the Misuse of Drugs Act.

34. We note that the phrase “at any time” is also used to define the scope of offences relating to stolen property, which, by virtue of s.20(2) of the Criminal Justice (Theft and Fraud Offences) Act 2001, includes in addition to the property originally stolen and parts of it, “any property which directly or indirectly represents, or has *at any time* represented, the stolen property in the hands of the person who stole the property as being the proceeds of any disposal or realisation of the whole or part of the stolen property or of property so representing the stolen property.” In that example, the Oireachtas has used the phrase to capture the wide time frame for which property representing the stolen property will be considered as stolen property. A well-known example of where the Oireachtas has provided for a specific time in which a vital ingredient of an offence must occur is in the definition of rape. Rape, as set out in the Criminal Law (Rape) Act 1981 as amended, is committed if a man “has unlawful sexual intercourse with a woman who *at the time* of the intercourse does not consent to it” and “*at that time* he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it.” These examples are given for the purpose of demonstrating that it is not unknown for the Oireachtas to specify that an ingredient of an offence must or can occur during

a particular time. Naturally, whether the Oireachtas is so referring to a time frame, will depend on the wording in the Act itself.

35. The appellant makes another point that the Oireachtas could have legislated for a valuation based upon street value if they had so wished either by using the term street value or by reference to the drug when sold in “individual deals”. The appellant submits that the absence of this is supportive of his view of market value. It seems to us that the submission does not follow.

36. The submission of the respondent that the difference in s.15A(1)(b) between “the drug” in the person’s possession and the market value of “the controlled drug” is helpful to the understanding of the section. We accept that the separate references to “the drug” and “the controlled drug” are not accidental. The latter reference to the market value of the controlled drug is a wide reference to the value of that particular type of controlled drug generally on the market and not simply to the drug in the possession of the accused. It is the value of the *controlled* drug on the market that is of significance to the culpability of an accused person. Such an interpretation accords in its widest sense with the view expressed by the Court of Criminal Appeal in *The People (DPP) v. Heaphy*, that on the basis that the evil in drug supply is in sale or supply to members of the public, there is no other possibility open other than that the retail market is being referred to in the section.

37. The decision in *Mullins v. Harnett*, as fairly conceded by counsel for the appellant, does not place the principle against doubtful penalisation or of strict interpretation of penal statutes above other canons of statutory interpretation. As O’Higgins J. said in that case at para 7:

“...therefore, that in constructing penal (not only criminal) statutes the same principles apply as to other statutes, but additional criteria have been taken into account also. Having applied “all the canons of interpretation” the matter does not appear to

me to be ambiguous (in the sense that, being a penal section, it would be resolved in a manner most favourable to the citizen).”

38. We are satisfied that on ordinary rules of construction, the market value of the controlled drug itself refers to the retail or street value of such controlled drug, and if *at any time* while an accused has it in his or her possession it amounts to €13,000 or more on that valuation, then he or she has committed an offence contrary to s.15A of the Misuse of Drugs Act. We would also comment that this interpretation of the intention of the Oireachtas avoids the absurdity that a dealer higher up the chain would not be guilty of a s.15A offence in respect of a package of drugs because in the market between dealers it was only valued at €10,000, while the dealer to whom the package of drugs was sold (in effect the “end dealer”) and who was personally breaking the drug down for individual sales, would be guilty of an offence under s.15A because the same drugs had a street value of €30,000. We are quite satisfied that the interpretation as indicated in *The People (DPP) v. Heaphy* and explained in more detail in this judgment, is the appropriate interpretation in accordance with the applicable canons of construction and which reflects the intention of the Oireachtas.

39. We therefore dismiss this appeal.