SUPREME COURT OF QUEENSLAND

CITATION:	*R v O'Ryan* [2008] QCA 390
PARTIES:	**R** **v** **O'RYAN, Michael Anthony Timothy** (appellant)
FILE NO/S:	CA No 324 of 2007 DC No 3434 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Brisbane
DELIVERED ON:	5 December 2008
DELIVERED AT:	Brisbane
HEARING DATE:	25 November 2008
JUDGES:	de Jersey CJ, Keane JA and White AJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Appeal against conviction dismissed** **2. Application for leave to appeal against sentence refused**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was convicted of two counts of defrauding the Commonwealth and two counts of dishonestly obtaining a financial advantage – where the appellant claimed to be suffering from a mental illness known as dissociative identity disorder – where the expert evidence on the nature of this illness and its impact upon the appellant was conflicting – whether it was open to the jury to be satisfied on all the evidence of the guilt of the appellant beyond reasonable doubt CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the appellant was sentenced to four years imprisonment with a non-parole period of 18 months – whether the sentence imposed was in the circumstances manifestly excessive *Criminal Code* 1995 (Cth), s 134.2

HML v The Queen (2008) 82 ALJR 723; [2008] HCA 16, cited
R v Hurst; ex parte Commonwealth DPP [2005] QCA 25, cited
R v Lovel [2007] QCA 281, cited
R v Wright (1994) 74 A Crim R 152; [1994] QCA 16, cited

COUNSEL: The appellant appeared on his own behalf
C Ryan (*sol*) for the respondent

SOLICITORS: The appellant appeared on his own behalf
Commonwealth Director of Public Prosecutions for the respondent

[1] **de JERSEY CJ:** I have had the opportunity of reading the reasons for judgment of Keane JA. I agree with the orders proposed by His Honour, and with his reasons.

[2] **KEANE JA:** On 1 November 2007 the appellant was convicted of two counts of defrauding the Commonwealth of Australia and two counts of dishonestly obtaining a financial advantage. On each count, the appellant was sentenced to four years imprisonment with a non-parole period of 18 months. The appellant was also ordered to pay by way of reparation to the Commonwealth the sum of $120,516.98.

[3] The appellant has appealed against each of the convictions on the ground that "the verdict was unreasonable in all of the circumstances". The appellant also seeks leave to appeal against the sentence imposed on him on the ground that it was "manifestly excessive".

[4] These matters came on for hearing on 17 September 2008. At that time the appellant sought and was granted an adjournment to enable him to prepare his arguments. When the matters came on for hearing on 25 November 2008, the appellant represented himself.

The case at trial

[5] The appellant was born on 16 August 1957. The name he was given at birth was Matthew Vincent Ryan. The appellant changed his name by deed poll on 13 October 1997 to Michael Anthony Timothy O'Ryan. This name change was registered with the Victorian Registry of Births, Deaths and Marriages, but the appellant did not advise Centrelink of his change of name. It was under this name that he was charged of the offences in question.

[6] The case for the prosecution in respect of count 1 on the indictment was that, from 23 March 1995 to 23 May 2001, the appellant obtained from the Commonwealth social security payments to which he was not entitled in the name of Vincent Matthew Ryan. This was alleged to be a contravention of s 29D of the *Crimes Act* 1914 (Cth).

[7] After 23 May 2001, s 134.2(1) of the *Criminal Code* 1995 (Cth) replaced s 29D of the *Crimes Act*. In relation to count 2 on the indictment, the prosecution case was that, between 24 May 2001 and 17 November 2003, the appellant obtained a Disability Pension in the name of Vincent Matthew Ryan in contravention of s 134.2(1) of the *Criminal Code*.

[8] The appellant, using his birth name Matthew Vincent Ryan, claimed the Jobsearch Allowance (which became the Newstart Allowance on 29 March 1996) from March

1995 until 31 May 2002 when he applied for and received a Disability Support Pension. He received the Disability Support Pension until 17 November 2003.

[9] The case for the prosecution in relation to counts 1 and 2 was that, during the whole of the period from 23 March 1995 until 17 November 2003, the appellant also claimed and received benefits, initially Newstart Allowance, and, from 3 August 2001, a Disability Support Pension, in the name of Vincent Matthew Ryan.

[10] Count 3 on the indictment alleged that, between 11 February 2000 and 23 May 2001, the appellant obtained social security payments to which he was not entitled in the name of Matthew Vincent Ryan.

[11] Count 4 on the indictment alleged that, between 24 May 2001 and 5 November 2003, he obtained social security payments to which he was not entitled in the name of Matthew Vincent Ryan.

[12] In relation to counts 3 and 4, the case for the prosecution was that, on 11 February 2000, the appellant claimed Newstart Allowance in the name of Matthew Vincent Ryan. He continued to receive this allowance until 5 November 2003.

[13] On 18 November 2003 investigators executed a search warrant at his mother's house. This address had been given to Centrelink as the residential address of Michael Anthony O'Ryan. At this address was a filing cabinet, in one drawer of which were three folders each of which contained documents for the appellant under his new name, Vincent Matthew Ryan and Matthew Vincent Ryan. The filing cabinet also contained folders of banking documents for each of the names. Three folders were labelled with account numbers with various banks for each identity. These were the accounts to which the payments in question were made by Centrelink in respect of each of the names.

[14] The prosecution relied upon video footage from Centrelink Customer Centres at Strathpine, Buddina and Toowoomba on three occasions between January and June 2003. This video was said to show the appellant presenting himself on these occasions as Matthew Vincent Ryan, Michael Anthony O'Ryan, and Vincent Matthew Ryan respectively. In the appellant's evidence at trial, he at some stages denied that the video depicted him; on another occasion he admitted that the video did depict him.

[15] The evidence adduced by the prosecution to establish that the appellant obtained the payments in question without entitlement was essentially unchallenged. On the hearing of the appeal, the appellant sought to raise for the first time the suggestion that there may have been discrepancies in the evidence adduced by the prosecution as to the amounts obtained by the appellant. The appellant's argument, which was outside the scope of his ground of appeal, was not particularised. Having regard to these circumstances and the conduct of the trial, this Court should not now entertain this argument especially since, as Ms Ryan who appeared for the respondent noted, the likelihood is that any discrepancy was in the appellant's favour.

[16] The only issue raised at trial on behalf of the appellant was that, during the periods the subject of the charges, he was suffering from a mental illness known as dissociative identity disorder ("DID"). It was said that he was not criminally responsible for his conduct because this disorder deprived him of the capacity to

know that what he did was wrong. Indeed the appellant gave evidence on the footing that Matt and Vince were his cousins.

[17] In the appellant's case at trial his friend, Mr Bowden, gave evidence that over the years that he had known the appellant, the appellant's behaviour was sometimes erratic, and he was often distant and did not seem to be himself.

[18] The appellant's case was also supported by the opinion of a psychiatrist, Dr Middleton. Dr Middleton gave evidence that DID is a recognised mental disorder which involves a disruption in the functioning of consciousness, memory, identity and perception and that, in his opinion, the appellant was affected by this disorder at the times relevant to the charges against him.

[19] Dr Middleton examined the appellant on 11 May 2006 for a period of approximately four and a half hours. It was on the basis of this examination that Dr Middleton opined that trauma suffered by the appellant at about 11 years of age, when he saw his father collapse from a heart attack, and the severe corporal punishment administered by his mother during his childhood, led the appellant, genuinely but wrongly, to believe that he had a twin brother, Matt, and a cousin, Vince.

[20] According to Dr Middleton, so far as the appellant was concerned, the social security payments in question were obtained by Matt or Vince. In reality, of course, these moneys were obtained by the appellant; but on the basis of Dr Middleton's opinion, it was contended on the appellant's behalf that his disorder prevented him from forming the intention to defraud the Commonwealth which was a necessary ingredient of the charges against him.

[21] Dr Middleton expressed the opinion that DID was a mental illness which robbed the appellant of the capacity to know that what he did in obtaining social security payments to which he was not entitled was wrong. In this regard, Dr Middleton said:

> "… in respect of the issue of whether he believed that these different named states, Matthew, Vincent and Michael were separate people … my assessment is that during the relevant period he believed … however delusional that may seem, that they were separate people and that if they were separate people, then they were entitled to claim a benefit … So therefore in the conventional sense he did not know that that was wrong because he reasoned that, in fact, it wasn't wrong because they were different people."

[22] Dr Middleton's opinion was disputed by Dr Grant, a psychiatrist called by the prosecution.

[23] Another psychiatrist, Dr Schramm, was called to give evidence by the defence. Dr Schramm's opinion was that the appellant may have been suffering from DID, but that he was sceptical of this conclusion because of doubts engendered by the appellant's presentation when he was examined by Dr Schramm.

[24] The psychiatric evidence differed as to the nature of DID, and the extent to which the appellant may have been affected by the condition. Dr Grant and Dr Schramm said that DID was a rare condition: Dr Middleton disputed that view. Dr Grant opined that DID might be caused by trauma between birth and five years of age:

Dr Middleton was of the view that relevant trauma might occur much later. Dr Grant and Dr Schramm opined that the level of organisation, keeping documents, and planning exhibited by the appellant was inconsistent with DID: Dr Middleton disputed that view.

[25] Mr Bowden gave evidence that the appellant often exhibited failures of memory. He did not say that he had ever met Matt or Vince. This was particularly significant in that during the appellant's evidence in re-examination, he was asked by his Counsel what his name was, and the appellant replied "Vince Ryan". He claimed that the appellant, Michael, is his cousin and is "the fellow who looks after all my paperwork and such." He claimed that he had been married for 11 years to a woman who left him in 1996.

[26] Neither Dr Middleton nor the appellant gave evidence that the appellant's mental illness impacted adversely on his management of his financial affairs, save for the obtaining social security payments by his "alter egos", Matt and Vince. It is not apparent from Dr Middleton's evidence how it could be that, over a period of eight years, the appellant, Michael Anthony Timothy O'Ryan, did not notice that he happened to be living on social security payments obtained for Matt and Vince. It is, of course, possible that the "identity switches" allegedly suffered by the appellant might have occurred with the synchronicity necessary to engender this state of blithe lack of awareness in the appellant; but there was no evidence to support such an explanation.

[27] The learned trial judge instructed the jury that it was for them to decide on the basis of the evidence whether they were satisfied that it was more probable than not that the appellant was suffering from DID during the dates set out in the charges, and whether DID was a mental impairment which had the effect of depriving the appellant of the capacity to know that his conduct was wrong. The jury by their verdict resolved this issue adversely to the appellant.

The arguments on appeal

[28] The appellant contends that it was not reasonably open to the jury on all the evidence to fail to be satisfied that it was more probable than not that the appellant was suffering from DID at the relevant times so as to be deprived of the capacity to know that his conduct was wrong. The appellant's argument must go so far as to assert that the only reasonable conclusion on the evidence was that the appellant was suffering from a delusional state in which he believed that the social security payments which he obtained in the names of Matt and Vince were actually obtained by separate and distinct people of that name. That argument cannot be sustained.

[29] The support afforded to the appellant's case by Mr Bowden was very limited; and, it may be said, gave rise to more questions than it answered. Having regard to the circumstances that the jury had the opportunity to observe "Vince", during the appellant's re-examination, it is only reasonable that the jury would have been likely to regard the fact that Mr Bowden did not say that he had ever met Matt or Vince as much more significant than Mr Bowden's evidence of the appellant's occasional vagueness or forgetfulness in terms of the coherence of the appellant's defence.

[30] It may be accepted that Dr Middleton is rightly regarded as pre-eminent in this particular field of psychiatry. The fact remains that the probative value of Dr Middleton's opinion depended upon the reliability of the appellant as a historian.

It cannot seriously be said that the jury were bound to regard the appellant as reliable. The first point to be made in this regard, of course, is that Dr Middleton's opinion, formed after a four and a half hour examination with the trial in mind, was dependent upon the reliability of the appellant's history of childhood trauma. But even if this point be put to one side, the jury were not bound to prefer the views of Dr Middleton to that of Dr Grant or Dr Schramm. It was reasonably open to the jury to prefer the opinion of Dr Grant or the scepticism of Dr Schramm to the opinion of Dr Middleton.

[31] The jury may well have thought that the level of planning and organisation exhibited by the appellant in obtaining the payments in question was, as Dr Grant and Dr Schramm said, inconsistent with the level of disability which Dr Middleton described. It is to be emphasised here that the issue is not whether the diagnosis of Dr Middleton was the more reasonable one, but whether it was the only reasonable explanation for the appellant's conduct so that the jury acted unreasonably in rejecting it.

[32] The case advanced by the appellant might well have raised questions in the minds of members of the jury as to whether it was really possible that the appellant could have organised to obtain social security payments in his capacity as Matt or Vince and to live on those payments without, at any time, noticing, as Michael Vincent Anthony O'Ryan, that he was living off moneys paid by the Commonwealth to Matt and Vince. In the circumstances of this case, such questions might fairly have been expected to arise in the minds of the jury,[1] but the evidence adduced on the appellant's behalf, including the evidence of Dr Middleton, would not have afforded an answer to such questions.

[33] The jury may also have been troubled by a concern as to whether the appellant could really have suffered for eight years from a serious mental illness when that illness seems to have manifested itself only by conduct which serendipitously increased his income from social security payments derived from the entitlements of close relatives who just happened, like him, to satisfy the conditions of an entitlement to receive social security payments. The jury may also have been troubled by the question why, if the appellant were genuinely afflicted by DID, close friends, such as Mr Bowden, would not be able to testify that they had met Matt and Vince. It was not unreasonable of the jury to have been troubled by these concerns about the coherence of the defence. Because of the appearance made by "Vince" in the appellant's re-examination, the jury were well-placed to come to their own view about these concerns.

[34] Of course, one cannot know how the jury reasoned in relation to the evidence; but the questions to which I have referred are questions to which the defence advanced on the appellant's behalf obviously gave rise. It cannot be said that the jury were not entitled to be sceptical of the defence case in the absence of satisfactory answers to those questions. Much less can it be said that the view of the evidence for which the appellant contends was the only view which could reasonably be held by the jury.

[35] The appellant also argued that he was not given a fair trial because "it is extremely possible" that he could have been under the influence of a hypoglycaemic attack

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1 Cf *HML v The Queen* (2008) 82 ALJR 723 at 821 – 822 [499] – [500].

while giving evidence. The transcript of the trial provides no support for this suggestion. What is apparent from the transcript is that the appellant's Counsel made the court aware of the appellant's diabetic condition and that the learned trial judge was astute to ensure that the appellant had the opportunity to take such medication as was necessary for his well-being. There is no reason to think that there is any substance in this argument.

[36] The appeal against conviction must be dismissed.

Sentence

[37] Once it is accepted that the appellant was properly convicted, it follows that he fell to be sentenced on the basis that he was criminally responsible for a deliberate course of dishonest acts over a period of eight years. This persistent dishonesty resulted in the appellant's obtaining in excess of $120,000 in social security payments.

[38] The jury's verdict required that the appellant be sentenced on the footing that he is a determined, resourceful and quite remorseless fraudster.

[39] That the appellant preyed upon the system of social security provided by the community for genuinely disadvantaged members of the community is a matter for special concern in terms of the appropriate denunciation of his criminal misconduct and general and personal deterrence.

[40] In these circumstances, there is no occasion to survey the authorities in the search for comparable cases.[2] The sentence imposed on the appellant was quite moderate and reflected substantial recognition of the circumstance that the appellant's diabetic condition will make his time in prison more than usually difficult. It cannot seriously be argued that the sentence imposed on the appellant was in any way excessive, much less that it was manifestly so.

Orders

[41] The appeal against conviction should be dismissed.

[42] The application for leave to appeal against sentence should be refused.

[43] **WHITE AJA:** I have read the reasons for judgment of Keane JA and agree with his Honour that the appeal against conviction should be dismissed.

[44] I also agree with his Honour that the sentence imposed was appropriate in all the circumstances.

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[2] Cf *R v Wright* (1994) 74 A Crim R 152; *R v Hurst; ex parte Commonwealth DPP* [2005] QCA 25; *R v Lovel* [2007] QCA 281.