

March 1994

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(DIVISIONAL COURT)

Wm

No: CO-2836-93

Royal Courts of Justice
Strand
London WC2

Tuesday, 29th March 1994

*Appeal against
ruling dismissed*

B e f o r e :

LORD JUSTICE MANN

and

MR JUSTICE LAWS

- - - - -

SHEPWAY DISTRICT COUNCIL

-v-

JAMES VINCENT

- - - - -

MR T STRAKER (instructed by Shepway District Council,
Legal Department, Civic Centre, Castle Hill Avenue,
Folkestone, Kent CT20 2QY) appeared on behalf of the
Appellant.

MR S BROWNE (instructed by Worthington Edridge Hulme
& Co, Folkestone, Kent) appeared on behalf of the
Respondent.

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(Computer Aided Transcript of the Stenograph Notes of
John Larking, Chancery House, Chancery Lane, London
WC2

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J U D G M E N T
(As approved by the Court)

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Tuesday, 29th March 1994

J U D G M E N T

LORD JUSTICE MANN: I will ask Mr Justice Laws to give the first judgment.

MR JUSTICE LAWS: This is a prosecutor's appeal by way of case stated against a decision of the Folkestone Magistrates given on 3rd August 1993. On that day they acquitted the respondent of an offence of engaging in street trading in a prohibited street, contrary to section 3 and paragraph 10(1)(a) of schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982. If the respondent was a pedlar or acting as a pedlar, as opposed to a street trader, he was not liable under the Act: schedule 4 paragraph 1(2)(a).

The facts are succinctly set out in the case. It was on 21st November 1992 that Mr Lidsey, a community officer, was on duty in the precinct at the town centre in Folkestone. He saw the respondent, Mr Vincent, with a trolley. It was displaying Christmas items. The respondent was talking to a lady with a child. He was standing within the area prohibited by statute for the purpose of offences under the Act of 1982, that was between West Terrace and West Cliffe Gardens. Mr Lidsey must have approached him, because the respondent produced to the community officer a Pedlar's Certificate of which he was in possession and which was in order.

The Magistrates then assert these short findings of fact, which I will take verbatim from the case:

"(f) The trolley itself was a wooden frame with very small wheels and was capable of being moved.

(g) Mr Lidsey did not notice the string used to pull the trolley.

(h) Mr Lidsey accepted that one of the wheels was broken.

(i) Mr Vincent had just started to walk through Folkestone when one of the wheels came detached from the trolley.

(j) Mr Vincent considered his trade in 1992 to be a pedlar, and as well as Christmas items sold balloons and hats all over Kent in places such as Canterbury, Folkestone, Dover and Deal."

I may break off there. The case also includes what described as a short statement of evidence and some reference to the arguments that were put before the Magistrates.

In essence, the question for this Court is whether on the primary facts found by them the Magistrates were bound to conclude that the respondent was at the time acting not as a pedlar but as a street trader. If not, he was entitled to be acquitted. The case turns, therefore, on the application of the definition of the term "pedlar" in section 3 of the Pedlars Act 1871. That provides:

"The term 'pedlar' means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft."

It will be noticed that the definition includes as part of the meaning given the word "pedlar" itself. so that in the term "pedlar" is thus not completely defined.

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The Oxford English Dictionary has this as the primary meaning of the term "pedlar": "One who goes about carrying small goods for sale (usu. in a bundle or pack); a travelling chapman or vendor of small wares."

In Watson v Malloy [1988] 1 WLR 1026 Hutchison J had to consider section 3, and said this at page 1032D:

"The definition in section 3, so far from extending or varying, in my view entirely conforms with the ordinary conception of the meaning of the term pedlar; as one would expect with a definition which includes as part of the meaning the very word sought to be defined. The popular conception of a pedlar is someone who goes around selling things or services, who sells on the move: he is an itinerant seller.

If the distinction is to be encapsulated in an aphorism, one might say that a pedlar is one who trades as he travels as distinct from one who merely travels to trade. I do not mean that he must not stop. As Woolf LJ suggested during the argument, the chair mender stops in order to mend chairs; but the feature which makes him a pedlar is that he goes from place to place, mending a chair here and a chair there: he comes to the owners of the distressed chairs rather than setting up his pitch and allowing them to come to him."

For my part I have no doubt that the notion of a pedlar primarily imports one who travels around selling small wares. Mr Straker's submission for the prosecutor is, however, that the respondent here cannot have been a pedlar because he was using a trolley which, but for the broken wheel, he would have pulled or pushed to carry his wares about. Clearly, section 3 itself makes it plain that the pedlar must be one who travels and trades on foot. The question here is whether, as a matter of law, a person is taken out of that definition if he uses an appendage, such as the trolley in use here, as a piece of ancillary equipment

for carrying his goods not on his own back but by means of wheels or other arrangements for transport of that kind.

In my judgment, while it is plain not only that the pedlar must be a pedestrian but also that the goods which he sells must be in essence small goods, there is nothing in the definition given in section 3, nor in my view in the ordinary meaning of the term "pedlar", to exclude a person who has some small means of assisting the transport of his goods, such as the trolley in the present case. Of course it is possible to conjure instances where someone travels from place to place using a much larger piece of equipment for the carriage of his goods. Where any such instances arise it will be a matter of fact for the Magistrates to decide whether the whole apparatus is of such a scale as to take the respondent in question out of the definition of the term "pedlar".

In the present case, however, given the findings of fact which I have recited, I can see no basis as a matter of law for holding that the Magistrates were not perfectly entitled to acquit this respondent on the basis that indeed he fell within the meaning of the term "pedlar". The Court, of course, does not make these decisions in a complete vacuum and one well understands that there may be concerns in the minds of the prosecuting authority as to the amenities that are offered to the public in this traffic-free precinct. However, for the purpose of this case, for my part I

would say no more than that I can detect no error of law by the Magistrates.

Turning to the questions asked in the case, question 1 in fact goes to a further defence that was put forward and is not now part of the respondent's case, and I would see no need to answer that question. Question 2 is:

"Whether there was any evidence to support the finding that the Defendant was acting as a pedlar under the authority of a Pedlar's Certificate granted under the Pedlar's Act 1981."

I would answer that question in the affirmative. Question

3, therefore, does not arise. In those circumstances and for those reasons I would dismiss the appeal.

LORD JUSTICE MANN: I agree. I can well understand the anxiety of the local authority in regard to this form of trading in a pedestrian precinct. However, I see no grounds as a matter of law upon which the decision of the Justices can be disturbed. Accordingly, the appeal is dismissed.

MR BROWNE: My Lord, can I indicate the respondent is legally aided. I believe your Lordship may have a copy of the current edition of Archbold to your Lordship's right. Certainly it looks similar.

LORD JUSTICE MANN: You are very perceptive, yes.

MR BROWNE: Volume 1 at paragraph 6-2, in fact page 971.

MR JUSTICE LAWS: You want a defendant's cost order under section 5?

MR BROWNE: My Lord, yes. It actually comes over the page at section 16(5)(a):

"Any proceedings in a criminal cause or matter determined before a Divisional Court....."

LORD JUSTICE MANN: Yes, I think we are familiar with that. I am always slightly reluctant to make these orders because it is simply a question of which public fund is going to pay for it, and the transfer of public funds costs money.

MR BROWNE: My Lord, it does, but with the greater awareness nowadays, particularly of the pressures on budgets, and the legal aid fund being a totally distinct fund----

MR JUSTICE LAWS: It looks better for the legal aid statistics. That is the submission, is it not?

MR BROWNE: It does.

MR JUSTICE LAWS: That is a perfectly respectable submission.

LORD JUSTICE MANN: It is a perfectly respectable point, but is the overall cost to the public increased? This is what always troubles me. Shunting public funds around costs money.

MR BROWNE: Rather than the defendant's solicitors or respondent's solicitors putting in a bill of costs to the legal aid fund, it would be a matter of that bill of costs within the six-month period being submitted to those who deal with the matter in the taxing office.

MR JUSTICE LAWS: It would not necessarily generate more expense to the public at large than would otherwise be the case.

LORD JUSTICE MANN: Do you have any observations?

MR STRAKER: My Lord, I do not think I can add to the debate on that.

LORD JUSTICE MANN: Very well. You may have a legal aid taxation and costs from central funds.

MR BROWNE: My Lord, I am grateful.
