

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

CO/209/96

Royal Courts of Justice  
Strand  
London WC2

Monday, 8th July 1996

B e f o r e :

LORD JUSTICE BELDAM

-and-

MRS JUSTICE SMITH

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WREXHAM MAELOR BOROUGH COUNCIL

-v-

PAUL MARK ROBERTS  
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(Computer-aided Transcript of the Stenograph Notes of  
John Larking, Chancery House, Chancery Lane, London WC2  
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Official Shorthand Writers to the Court)  
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R H RICHARDS (instructed by Legal Department for Wrexham  
Borough Council) appeared on behalf of the Appellant.

The Respondent appeared in person and was not represented.

J U D G M E N T

Monday 8th.

A  
LORD JUSTICE BELDAM: I will ask Smith J to give the first judgment.

B  
MRS JUSTICE SMITH: This is an appeal by the prosecutor, the Wrexham Maelor Borough Council, by way of Case Stated by the Justices for the County of Clwyd in respect of their dismissal of an information alleging unlawful street trading by Paul Mark Roberts (the Respondent to this appeal) contrary to paragraph 10(1) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982. I shall refer to that Act hereafter as the 1982 Act.

C  
D  
Mr Roberts, the Respondent, has attended this Court today in person but has not been called upon to make any submissions.

E  
F  
On 22nd December 1994 the Respondent was selling balloons in Hope Street, Wrexham. The Appellants had declared Hope Street to be a prohibited street under the 1982 Act so that street trading was unlawful. However, the Respondent held a valid Pedlar's Certificate issued pursuant to the Pedlars Act of 1871. A pedlar, as defined in the Act of 1871, is exempted from the prohibition on street trading imposed by the 1982 Act provided that he conducts himself as a pedlar.

It is convenient, at this stage, if I set out the

A  
relevant statutory provisions. Paragraph 10(1) of Schedule  
4 to the 1982 Act provides:

"A person who-

(a) engages in street trading in a prohibited  
street: or

...

B  
without first having been granted permission to  
do so...

shall be guilty of an offence."

C  
Subparagraph (2) lists various activities which do not  
constitute "street trading" of which the first is:

"trading by a person acting as a pedlar under the  
authority of a pedlar's certificate granted under  
the Pedlar's Act 1871."

D  
Section 3 of the 1871 Act defines a pedlar as follows:

E  
"... 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:"

F  
Thus the issue before the Justices was whether the  
prosecutor could prove, to the criminal standard of proof,  
that the Respondent, who was admittedly selling balloons in  
Hope Street, had not conducted himself as a pedlar as  
defined by Section 3 of the 1871 Act. If the prosecutor so  
proved, the Respondent would be guilty of an offence under  
G  
the 1982 Act. The Justices held that the prosecution had  
not discharged that burden upon them and acquitted the

Respondent.

The facts which the Justices recorded in the Case Stated, were partly facts agreed between the parties and partly their own findings. First, it was agreed that Hope Street was a prohibited street under the 1982 Act and that the Respondent's Pedlar's Certificate was valid. It was also agreed that the Respondent did not call out or otherwise advertise his wares; his customers came to him.

The Justices found facts which I can summarise as follows: Mr Jones (the Appellants' employee) observed the Respondent intermittently, between about 10.40 am and 1.25 pm, on 22nd December 1994. The Respondent had parked his van in a car park in Wrexham and had walked to a pedestrianised shopping precinct which included Hope Street. He had about 50 helium filled balloons on strings which he held in his hand. At 10.40 he was seen on Hope Street outside a bakery; at 11.05 he was seen near Mothercare. At 11.25 he was near Marks and Spencer. At 12 o'clock he was seen to return to the car park to collect further supplies from his van and he was again seen on the shopping precinct with more balloons at about 12.35. At 12.55 he was seen outside Littlewoods. He then walked to Marks and Spencer, which is about a three to four minute walk, but it took the Respondent about ten minutes. The Magistrates found that during that walk he stopped three or four times to make a sale when customers approached him. They also found that his general mode of progress was to

A meander. They said that:

"He walked at a slow and steady pace as the helium filled balloons are difficult to control particularly if there are many people about or obstacles to avoid."

B They found that he stopped when the balloons had become tangled or when customers approached him, or to stamp his feet because of the cold weather. They also found that at times he would hover on the same spot for about a minute moving to and fro conducting his sales. At about 1.25pm Mr C Jones stopped the Respondent and told him that he had been observed at various times during the morning and the Respondent thereupon produced his Pedlar's Certificate.

D The Justices were referred to at least two authorities: the case of Watson v Malloy [1988] 1 W.L.R. 1026 and an unreported case called R v Taylor which was a decision of His Honour Judge Proctor sitting at Manchester Crown Court with two Justices.

E The Justices gave, as their reasons for acquitting the Respondent, first, that he was trading as he travelled as distinct from travelling to trade and therefore was within the provisions of the Pedlar's Act. It is apparent that the phraseology of that sentence comes directly from the case of Watson v Malloy where Hutchison J said:

"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."



A what pedlars can and cannot do while trading in a busy  
street. Counsel has not submitted, as indeed on the state  
of the authorities he accepts he cannot, that it is  
B necessary for a trader who relies on his Pedlar's  
Certificate to demonstrate that he was going somewhere in  
particular. He accepts that a pedlar may walk up and down a  
C busy shopping street. But he submits that this Court should  
give a clear ruling that if a trader with a Pedlar's  
Certificate stops, other than to make a sale, he will be  
acting outside the scope of his Certificate.

D We were referred, in particular, to the case of  
Stevenage Borough Council v Monty Wright reported in the  
Times on 10th April 1996. The transcript is dated 2nd April  
1996. That was a case in which the trader (the holder of  
E the Pedlar's Certificate) had put down his goods on the  
ground and had been trading from one position for about an  
hour. In the course of his judgment Leggatt LJ, at page 10,  
said:

"Essentially a pedlar, acting as such, is travelling when he is not trading. So the length is important of those periods during which he is stationary and not selling but is prepared to do so. The use of a stall or stand may indicate an intention to remain in one place or in a succession of different places for longer than is necessary to effect a particular sale or sales."

Later he said:

"The Magistrates justified their decision that the Respondent was a pedlar by saying that they 'found it material that the Respondent was not trading from a stall and that he was entitled to stop to trade.' The fact that he was not trading from a stall did not of itself mean that he was acting as

A a pedlar, and though he was entitled to stop to trade that was only so in the sense of pausing for the purpose of effecting individual sales."

B Counsel submits that because Leggatt LJ has there spoken of the entitlement to stop to trade, and that entitlement being limited to a pause for the purpose of effecting an individual sale, any other form of pausing is automatically outside the scope of the Pedlar's Certificate and not part of the proper conduct of a pedlar. I, for my part, cannot accept that the conduct of a pedlar is to be so narrowly prescribed. In the course of argument I asked counsel whether a trader who bent down to tie his shoe lace would be pausing in such a way as to take him outside the conduct of his Pedlar's certificate. What if he were to stop to speak to somebody he knew or to stop to buy something to eat for himself? It seems to me that what the Magistrates must do when they consider the evidence of the trader's conduct, and ask themselves whether it falls within the definition of a pedlar in Section 3, is to look at the nature of his activities. Of course, the fundamental requirement is that the pedlar should be, and should be seen to be, trading while he is travelling. In other words, he is to be, and to be seen to be, a peripatetic trader.

G In the course of his peripatetic trading no doubt he will have to stop in order to trade but there may be other reasons why he may pause. It is a matter for the Justices to consider not only the length of those pauses but also what appears to be their purpose. It is a matter for them



