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

Royal Courts of Justice Strand London WC2

Monday, 8th July 1996

Before:

LORD JUSTICE BELDAM

-and-

MRS JUSTICE SMITH

WREXHAM MAELOR BOROUGH COUNCIL

-v-

PAUL MARK ROBERTS

(Computer-aided Transcript of the Stenograph Notes of John Larking, Chancery House, Chancery Lane, London WC2
Telephone No: 071-404 7464
Fax No: 071 404 7443
Official Shorthand Writers to the Court)

- R H RICHARDS (instructed by Legal Department for Wrexham Borough Council) appeared on behalf of the Appellant.
 - e Respondent appeared in person and was not represented.

JUDGMENT

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

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.

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

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

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

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

shall be guilty of an offence."

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."

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

"... 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:"

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 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 meander. They said that:

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"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."

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 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.

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

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."

Second, they considered that he was acting within the definition of a pedlar. They said they were not satisfied that the Appellant had adduced sufficient evidence of the Respondent's "non movements" to show beyond reasonable doubt that he had ceased to travel, given that the Respondent had not been under continuous observation. Finally they found that the periods when the Respondent was not moving were sufficiently short to bring him within the Pedlar's Act.

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The question which they posed for the Court was whether there was evidence on which they could find that the manner in which the Respondent traded brought him within the ambit of his Pedlar's Certificate.

Today the submission before us is that the Justices ought not to have acquitted. The finding that he had stopped to stamp his feet, and perhaps to untangle the strings of his balloons, was such that the Justices were obliged to find that he had stopped for purposes other than making a sale and was therefore conducting himself in a way which fell outside that permitted by his Pedlar's Certificate. At one stage it appeared also that counsel was relying upon the finding that the Respondent had 'hovered' for about a minute moving to and fro conducting sales. However counsel has accepted, as it seems to me rightly, that the finding that the Respondent 'hovered' related expressly to the making of sales.

Counsel submits is that it is important for Local Authorities, and perhaps also for pedlars, to know exactly

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 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 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.

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 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

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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."

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.

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

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those activities and those pauses bring the trader outside the terms of the Pedlar's Certificate. It seems to me in this case that that is what the Magistrates have done. There was ample evidence upon which they could find that these brief pauses did not take this man's conduct outside the definition of a pedlar.

In my judgment these Magistrates were entitled to find, as they did, that the prosecutor had not made out its case.

I would dismiss this appeal.

LORD JUSTICE BELDAM: I agree.

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MR RICHARDS: My Lady, one matter arises and that is this: you said in the course of the judgment that Stevenage Borough Council was unreported. The only report I found was in the Times, dated April 10th 1996, and that may be helpful.

MRS JUSTICE SMITH: I am grateful and I will amend the transcript accordingly to 10th April.

MR RICHARDS: The 10th April 1996.

LORD JUSTICE BELDAM: The appeal is therefore dismissed. As far as Mr Roberts' costs of coming here are concerned, and any costs incurred, is there any reason why you should not pay those?

MR RICHARDS: My submission would be that they should come out of central funds. That would be the normal Order in a criminal appeal of this nature. As I understand it Mr Roberts' solicitors were informed, by those instructing me, that they do not wish to attend because even if the appeal was successful there would be no application for costs by the Appellants against the Respondent. Mr Roberts I know, as he has told me, had some costs before that position was reached. He was perfectly entitled to come here today. I do not resist an Order for him having his costs.

LORD JUSTICE BELDAM: You say they should be paid out of local funds and not out of Wrexham Borough council. Does it make any difference?

MR RICHARDS: I think it does.